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LEGISLATIVE JOURNAL
OF THE
STATE OF NEBRASKA
Volume 1

NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION

1989

Convened November 8, 1989

Adjourned November 17, 1989

LINCOLN, NEBRASKA

Compiled

Under the Authority of the Legislature

by

PATRICK J. O'DONNELL, CLERK

OFFICERS OF THE LEGISLATURE

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 Patrick J. O'Donnell, Clerk Lincoln
 Richard Brown, Assistant Clerk Lincoln
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 Dennis Baack, Kimball Member-at-large
 Ernie Chambers, Omaha Member-at-large
 Rod Johnson, Sutton Member-at-large
 Loran Schmit, Bellwood Member-at-large
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LEGISLATURE

MEMBERS

Dist.	Name	Address	Occupation	Counties
1	Spencer W. Morrissey	Tecumseh	Track Inspector	Johnson, Nemaha, Otoe*, Pawnee, Richardson
2	Roger R. Wehrbein	Plattsmouth	Farmer/Feeder	Cass, Otoe*
3	Emil E. Beyer, Jr.	Gretna	Caterer, Real Estate Investments	Douglas*, Sarpy*
4	Gary E. Hannibal	Omaha	Contractor	Douglas*
5	Bernice Labedz	Omaha	Retired	Douglas*
6	Brad Ashford	Omaha	Lawyer	Douglas*
7	Timothy J. Hall	Omaha	Director of Human Resources America First, Inc.	Douglas*
8	Sharon Beck	Omaha	Homemaker	Douglas*
9	John C. Lindsay	Omaha	Attorney	Douglas*
10	Carol McBride Pirsch	Omaha	Supervisor- Community Relations	Douglas*
11	Ernie Chambers	Omaha	Barber	Douglas*
12	Chris Abboud	Omaha	Attorney	Douglas*
13	Daniel C. Lynch	Omaha	Insurance	Douglas*
14	Ron Withem	Papillion	Executive Director, Mechanical Contractors	Sarpy*
15	Lowell C. Johnson	North Bend	Farm and Property Management	Dodge*
16	Frank Korshoj	Herman	Retail Lumberman	Burt, Cumming*, Thurston, Washington

Dist.	Name	Address	Occupation	Counties
17	Gerald Conway.....	Wayne.....	Professor, Consultant.....	Dakota, Dixon, Wayne*
18	Stan Schellpeper.....	Stanton.....	Farmer/Feeder.....	Colfax, Cuming*, Dodge*, Stanton
19	Elroy M. Hefner.....	Coleridge.....	Business Executive.....	Cedar, Knox, Pierce, Wayne*
20	Glenn A. Goodrich.....	Omaha.....	Real Estate.....	Douglas*
21	Richard Peterson.....	Norfolk.....	Farmer/Beekeeper/ Businessman	Madison
22	Jennie Robak.....	Columbus.....	Homemaker.....	Boone*, Nance, Platte*
23	Loran Schmit.....	Bellwood.....	Farmer.....	Butler, Platte*, Saunders
24	Scott Moore.....	Stromsburg.....	Farmer/State Senator.....	Polk*, Seward, York
25	Jerome Warner.....	Waverly.....	Livestock/Farming.....	Lancaster*
26	Don Wesely.....	Lincoln.....	LT&T Senior.....	Lancaster*
			Research Associate	
27	DiAnna R. Schimek.....	Lincoln.....	Realtor.....	Lancaster*
28	James D. McFarland.....	Lincoln.....	Attorney.....	Lancaster*
29	LaVon Crosby.....	Lincoln.....	Homemaker.....	Lancaster*
30	Dennis M. Byars.....	Beatrice.....	Development Officer- Martin Luther Home	Gage, Jefferson*
31	Jerry Chizek.....	Omaha.....	Manager, Public Affairs.....	Douglas*
32	George Coordsen.....	Hebron.....	Farmer.....	Fillmore, Jefferson*, Saline, Thayer
33	Jacklyn Smith.....	Hastings.....	Public Relations.....	Adams
34	Rod Johnson.....	Sutton.....	Farmer.....	Clay, Hall*, Hamilton, Merrick, Polk*
35	Arlene Nelson.....	Grand Island.....	State Senator.....	Hall*

Dist.	Name	Address	Occupation	Counties
36	Lorraine Langford	Kearney.....	Grandmother	Buffalo*, Hall*
37	Doug Kristensen.....	Minden.....	Attorney.....	Buffalo*, Franklin, Kearney, Nuckolls, Webster
38	W. Owen Elmer	Indianola	Agri-Business	Frontier, Furnas, Gosper, Harlan, Lincoln*, Red Willow
39	William E. Barrett	Lexington.....	Real Estate/Insurance	Dawson, Phelps
40	Merton L. Dierks.....	Ewing	Veterinarian/Rancher.....	Antelope, Boone*, Boyd, Holt
41	Carson H. Rogers.....	Ord.....	Hog Farmer	Custer*, Garfield, Greeley, Hall*, Howard, Loup, Sherman, Valley, Wheeler
42	David Bernard-Stevens	North Platte.....	Educator	Lincoln*
43	Howard Lamb.....	Anselmo	Rancher.....	Blaine, Brown, Cherry, Custer*, Hooker, Keya Paha, Logan, McPherson, Rock, Thomas
44	Rex Haberman.....	Imperial.....	State Senator.....	Arthur, Chase, Deuel, Dundy, Grant, Hayes, Hitchcock, Keith, Lincoln*, Perkins
45	D. Paul Hartnett.....	Bellevue.....	College Professor	Sarpy*
46	David M. Landis.....	Lincoln.....	College Instructor	Lancaster*
47	Dennis G. Baack.....	Kimball	Farmer	Banner, Cheyenne, Garden, Kimball, Morrill, Scotts Bluff*
48	John L. Weihing	Gering	Retired Professor	Scotts Bluff*
49	Sandra K. Scofield.....	Chadron	Counselor/Consultant/ Farmer	Box Butte, Dawes, Sheridan, Sioux

Clerk

Patrick J. O'Donnell Lincoln

RULES OF THE LEGISLATURE

Rules in effect at the commencement of the Ninety-First Legislature, First Special Session, 1989, are the same rules in effect at the commencement of the Ninety-First Legislature, Second Session, 1990.

FIRST DAY - NOVEMBER 8, 1989

LEGISLATIVE JOURNAL

NINETY-FIRST LEGISLATURE FIRST SPECIAL SESSION

FIRST DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, November 8, 1989

Pursuant to a proclamation by Her Excellency, Kay A. Orr, Governor of the State of Nebraska, the Ninety-First Legislature, First Special Session, assembled in the West Legislative Chamber of the State Capitol, at the hour of 11:04 a.m., Wednesday, November 8, 1989, and was called to order by President Nichol.

PRAYER

The prayer was offered by Senator L. Johnson.

ROLL CALL

The roll was called and the following members were present:

Abboud, Chris	Haberman, Rex	McFarland, James D.
Ashford, Brad	Hall, Timothy J.	Morrissey, Spencer W.
Baack, Dennis G.	Hannibal, Gary E.	Nelson, Arlene B.
Barrett, William E.	Hartnett, D. Paul	Peterson, Richard
Beck, Sharon	Hefner, Elroy M.	Pirsch, Carol McBride
Bernard-Stevens, David F.	Johnson, Lowell C.	Robak, Jennie
Beyer, Emil E., Jr.	Johnson, Rod	Rogers, Carson H.
Byars, Dennis	Korshoj, Frank	Schellpeper, Stan
Chambers, Ernie	Kristensen, Doug	Schimek, DiAnna R.
Chizek, Jerry	Labeledz, Bernice	Schmit, Loran
Coordsen, George	Lamb, Howard A.	Smith, Jacklyn J.
Crosby, LaVon	Landis, David M.	Warner, Jerome
Dierks, Merton L.	Langford, Lorraine	Wehrbein, Roger R.
Elmer, W. Owen	Lindsay, John C.	Weihing, John L.
Goodrich, Glenn A.	Lynch, Dan	

Messrs. Gerald Conway, Scott Moore, Don Wesely, Ronald Withem, and Ms. Sandra Scofield were excused.

DECLARATION

Pursuant to a proclamation issued by the Honorable Kay A. Orr, Governor of Nebraska, we are here and now assembled in the 91st Legislature, 1st Special Session of the Nebraska Legislature. I, as Lieutenant Governor, declare that we are now open for the transaction of business.

(Signed) William E. Nichol
Lieutenant Governor

CERTIFICATE**STATE OF NEBRASKA**

United States of America,)	
) ss.	Department of State
State of Nebraska)	

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached is a true and correct copy of a Proclamation by the Governor of the State of Nebraska calling an extraordinary (special) session of the Legislature.

I hereby certify that said document was filed in the office of the Secretary of State on the second day of November, 1989.

Finally, I hereby certify that copies of this proclamation are on file in the office of Secretary of State and are a matter of public record.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this eighth day of November in the year of our Lord, one thousand nine hundred and eighty-nine.

(SEAL)	(Signed)	ALLEN J. BEERMANN
		Secretary of State

PROCLAMATION

BY VIRTUE OF THE AUTHORITY VESTED in the Governor by Article IV, Section 8, of the Constitution of the State of Nebraska, I, Kay A. Orr, as Governor of the State of Nebraska, believing that

an extraordinary occasion has arisen, DO HEREBY CALL the Legislature of Nebraska to convene an extraordinary session at the State Capitol on November 8, 1989, at 11:00 a.m., for the purpose of considering and enacting legislation relating to the following subjects:

1. Amend Chapter 77, Article 1, of the Nebraska Revised Statutes to redefine the terms real property, personal property and tangible property; and
2. Amend the statutory provisions for refunds and injunctions of property taxes in Chapter 77, Article 17, of the Nebraska Revised Statutes; and
3. To enact legislation to extend to railroad rolling stock the same tax treatment already granted by section 306 (1) (d) of the Federal 4-R Act and federal court interpretations of that Act; and
4. Adopt a penalty for the failure to pay property taxes in a timely manner; and
5. Appropriate funds for the necessary expenses of the extraordinary session herein called;

I direct that members of the Legislature of the State of Nebraska be notified of the convening of this extraordinary session by sending each of them a copy of this Proclamation.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska be affixed this 2nd day of November, 1989.

(Signed) KAY A. ORR
Governor

(SEAL)

Attest:

(Signed) ALLEN J. BEERMANN
Secretary of State

CERTIFICATE

STATE OF NEBRASKA

United States of America,)
) ss.
State of Nebraska)

Department of State

I, Allen J. Beermann, Secretary of State of the State of Nebraska do hereby certify that the attached represents a true and correct roster of members of the Nebraska Unicameral Legislature serving in the Ninety-first Legislature, First Extraordinary (Special) Session, called by the Governor to commence on November 8, 1989.

Further, I hereby certify that all members whose names appear on the roster with the district designation have been duly elected or appointed to serve as a member of the Legislature in the Ninety-first Legislature, First Extraordinary (Special) Session.

Finally, I hereby certify that all election or appointment records are a matter of public record in the office of Secretary of State.

Further, I saith not.

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State of Nebraska.

Done at Lincoln this eighth day of November in the year of our Lord, one thousand nine hundred and eighty-nine.

(SEAL) (Signed) ALLEN J. BEERMANN
Secretary of State

DISTRICT	NAME	ELECTED
1	Spencer W. Morrissey	November 8, 1988
2	Roger R. Wehrbein	November 4, 1986
3	Emil E. Beyer, Jr.	November 8, 1988
4	Gary Hannibal	November 4, 1986
5	Bernice Koziol Labedz	November 8, 1988
6	Brad Ashford	November 4, 1986
7	Tim Hall	November 8, 1988
8	Sharon Beck	*Appt'd. January 4, 1989
9	John C. Lindsay	November 8, 1988
10	Carol McBride Pirsch	November 4, 1986
11	Ernie Chambers	November 8, 1988
12	Chris Abboud	November 4, 1986
13	Daniel C. Lynch	November 8, 1988
14	Ron Withem	November 4, 1986
15	Lowell C. Johnson	November 8, 1988
16	Frank Korshoj	November 4, 1986
17	Gerald Conway	November 8, 1988
18	Stan Schellpeper	November 4, 1986
19	Elroy M. Hefner	November 8, 1988
20	Glenn A. Goodrich	November 4, 1986
21	Richard Peterson	November 8, 1988

22	Jennie Robak	November 8, 1988
23	Loran Schmit	November 8, 1988
24	Scott Moore	November 4, 1986
25	Jerome Warner	November 8, 1988
26	Don Wesely	November 4, 1986
27	DiAnna R. Schimek	November 8, 1988
28	James D. McFarland	November 4, 1986
29	LaVon Crosby	November 8, 1988
30	Dennis M. Byars	**Appt'd. December 16, 1988
31	Jerry Chizek	November 8, 1988
32	George Coordsen	November 4, 1986
33	Jacklyn Smith	November 8, 1988
34	Rod Johnson	November 4, 1986
35	Arlene Nelson	November 8, 1988
36	Lorraine Langford	November 4, 1986
37	Doug Kristensen	November 8, 1988
38	W. Owen Elmer	November 4, 1986
39	William E. Barrett	November 8, 1988
40	Merton L. Dierks	November 4, 1986
41	Carson Rogers	November 8, 1988
42	David Bernard-Stevens	November 8, 1988
43	Howard A. Lamb	November 8, 1988
44	Rex S. Haberman	November 4, 1986
45	D. Paul Hartnett	November 8, 1988
46	David M. Landis	November 4, 1986
47	Dennis Baack	November 8, 1988
48	John L. Weihing	November 4, 1986
49	Sandra K. Scofield	November 8, 1988

*Appt'd. to fill vacancy created by resignation of Vard R. Johnson

**Appt'd. to fill vacancy created by resignation of Patricia Morehead

MOTION - Election of Officers

Mrs. Labeledz moved that the following officers be elected to serve for the Ninety-First Legislature, First Special Session:

Clerk of the Legislature	Patrick J. O'Donnell
Assistant Clerk of the Legislature	Richard K. Brown
Sergeant at Arms	Carl E. Kamprath
Chaplain Coordinator	Harland Johnson

Mr. Chambers requested a record vote on the Labeledz motion.

Voting in the affirmative, 38:

Abboud	Crosby	Johnson, R.	Lynch	Schellpeper
Ashford	Dierks	Korshoj	McFarland	Schimek
Baack	Goodrich	Kristensen	Nelson	Schmit
Barrett	Haberman	Labeledz	Peterson	Smith
Beyer	Hall	Lamb	Pirsch	Warner
Byars	Hannibal	Landis	Robak	Wehrbein
Chizek	Hartnett	Langford	Rogers	Weihing
Coordsen	Johnson, L.	Lindsay		

Voting in the negative, 1:

Chambers

Present and not voting, 5:

Beck	Bernard-Stevens	Elmer	Hefner	Morrissey
------	-----------------	-------	--------	-----------

Excused and not voting, 5:

Conway	Moore	Scofield	Wesely	Withem
--------	-------	----------	--------	--------

The motion prevailed with 38 ayes, 1 nay, 5 present and not voting, and 5 excused and not voting.

MESSAGES FROM THE GOVERNOR

May 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Agricultural Land Valuation Advisory Board, requiring legislative confirmation.

Appointee: Bruce B. Johnson, 309 Filly Hall, Lincoln, NE 68583, (402) 472-1794.

This appointment is respectfully submitted for your consideration.

Sincerely,

FIRST DAY - NOVEMBER 8, 1989

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(Signed) KAY A. ORR
Governor

KAO:tr

June 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Board of Health, requiring legislative confirmation.

Appointee: Arthur A. Weaver, D.O., 16556 Dorcas, Omaha, NE 68130, (402) 333-2744.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

June 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Coordinating Commission for Postsecondary Education, requiring legislative confirmation.

Appointee: Dr. James McClurg, 2030 Surfside Drive, Lincoln, NE 68528, (402) 476-2811.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

June 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Electrical Board, requiring legislative confirmation.

Appointee: Emmett Smith, 6121 S. 102 Street, Omaha, NE
68127, (402) 337-3096.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

June 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Electrical Board, requiring legislative confirmation.

FIRST DAY - NOVEMBER 8, 1989

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Appointee: Joseph E. Pinhero, 2580 S. 90 Street, Omaha, NE 68124, (402) 397-5280.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Barb Bierman Batie, Route 1, Box 50, Lexington, NE 68850, (308) 324-2541.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Vernon H. Pearson, RR 2, Box 58, Shickley, NE 68436, (402) 627-4935.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Mark A. Whitehead, 4605 S. 98 Street, Lincoln, NE 68510, (402) 488-8578.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

FIRST DAY - NOVEMBER 8, 1989

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Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Dwayne G. Smith, Route 4, Box 130, Columbus, NE 68601, (402) 564-8331.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Darlene Kiefer, 617 Adams, Kimball, NE 69145, (308) 235-3651.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building

Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Elwin M. Larson, 1819 Farnam, Omaha, NE 68183,
(402) 493-7828.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Liquor Control Commission, requiring legislative confirmation.

Appointee: William R. Skarda, 20104 Cornhusker Rd., Gretna,
NE 68028, (402) 332-4406.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker

FIRST DAY - NOVEMBER 8, 1989

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and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Robert R. Root, 8421 Walnut Street, Omaha, NE 68124, (402) 397-6400.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: George E. Tesar, Jr., Cass County Assessor, Plattsmouth, NE 68048, (402) 296-3383.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Alice M. Ryschon, 114 E. 3 Street, Kimball, NE 69145, (308) 235-2362.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Robert L. Morrison, P.O. Box 629, North Platte, NE 69103, (308) 532-6870.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

FIRST DAY - NOVEMBER 8, 1989

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July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: James E. Brooks, 1101 West B Street, McCook, NE 69001, (308) 345-5520.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Irene Hunsberger, Box 537, Fairbury, NE 68352, (402) 475-6911.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR

Governor

KAO:tr

July 26, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Gasohol Committee and the Ethanol Authority and Development Board, requiring legislative confirmation.

Appointee: James Kral, Route 1, Box 78, Bladden, NE 68928,
(402) 756-1283.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 26, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Gasohol Committee and the Ethanol Authority and Development Board, requiring legislative confirmation.

Appointee: Howard G. Buffett, 2909 Ponca Rd., Omaha, NE
68112, (402) 444-6405.

FIRST DAY - NOVEMBER 8, 1989

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This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 26, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Gasohol Committee and the Ethanol Authority and Development Board, requiring legislative confirmation.

Appointee: Richard Lichti, 505 N. Plum, Shickley, NE 68436,
(402) 627-3705.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 28, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment requiring legislative confirmation.

Appointee: Director, Dept. of Administrative Services, Deborah L. Thomas, 2325 Marilynn Ave., Lincoln, NE 68502, (402) 471-2715.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tw

July 28, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment requiring legislative confirmation.

Appointee: Director, Department of Personnel, Jerry L. Sellentin, 2325 St. Thomas Drive, Lincoln, NE 68502, (402) 399-1710.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tw

August 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

FIRST DAY - NOVEMBER 8, 1989

19

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Gasohol Committee, requiring legislative confirmation.

Appointee: Opal Jensen, Route 1, Box 249, Arlington, NE 68002, (402) 426-2111.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

August 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Personnel Board, requiring legislative confirmation.

Appointee: Christine M. Harris, Box 80837, Lincoln, NE 68501, (402) 476-2811.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

August 10, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Public Employees Retirement Board, requiring legislative confirmation.

Appointee: Karen L. Brasee, 2508 Arrowhead, Grand Island, NE 68801, (308) 382-5431.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Sylvia B. Wagner, 702 Parkwood Lane, Omaha, NE 68132, (402) 554-1122.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

August 22, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building

FIRST DAY - NOVEMBER 8, 1989

21

Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Commission of Industrial Relations, requiring legislative confirmation.

Appointee: Frankie Dawson, P.O. Box 1669, North Platte, NE 69101, (308) 532-7110.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

August 22, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Child Abuse Prevention Fund Board, requiring legislative confirmation.

Appointee: Jack E. Hallstrom, 11821 William, Omaha, NE 68144, (402) 330-2625.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

August 22, 1989

Mr. President, Mr. Speaker

and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Motor Vehicle Industry Licensing Board, requiring legislative confirmation.

Appointee: Dana E. Trowbridge, 595 4th Street, David City,
NE 68632, (402) 367-3047.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

September 14, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Board of Parole, requiring legislative confirmation.

Appointee: Carlos Alvarez, 6919 Oak Plaza, Apt. 708, Omaha,
NE 68106, (402) 471-2156.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

September 29, 1989

FIRST DAY - NOVEMBER 8, 1989

23

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Fred E. Zwonechek, Department of Motor Vehicles,
Lincoln, NE 68509, (402) 471-2515.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Rollin Schnieder, 222 Chase Hall, Lincoln, NE
68503, (402) 472-3951.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Larry Morris, Game and Parks Commission,
Lincoln, NE 68503, (402) 471-0641.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: John J. Siefkes, P.O. Box 30578, Lincoln, NE 68503,
(402) 483-2511.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR

FIRST DAY - NOVEMBER 8, 1989

25

Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Ralph Hild, RR 2, Box 39, Plattsmouth, NE 68048,
(402) 298-8811.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 18, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: Charles Strasburg, 535 N. Park, Fremont, NE
68025, (402) 721-2221.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Duane Schmidt, Department of Education, Lincoln, NE 68509, (402) 471-2740.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 6, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Clayton L. Andrews, P.O. Box 1609, Norfolk, NE 68702, (402) 371-5440.

FIRST DAY - NOVEMBER 8, 1989

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This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 6, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Betty J. Stuckey, Route 2, Box 181, Lexington, NE 68850, (308) 324-2127.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 6, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Thomas J. Gorman, 1107 William Ct., North Platte,
NE 69101, (308) 532-8980.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 17, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I
have made the following appointment to the State Highway
Commission, requiring legislative confirmation.

Appointee: Soren S. Jensen, 11825 Wakely Plaza #2, Omaha,
NE 68144, (402) 397-2200.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

January 17, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

FIRST DAY - NOVEMBER 8, 1989

29

This is to inform the honorable members of the Legislature that I have made the following appointment to the Child Abuse Prevention Fund Board, requiring legislative confirmation.

Appointee: Marianna Vargas, P.O. Box 875, Kearney, NE 68848, (308) 237-2104.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

July 5, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Environmental Control Council, requiring legislative confirmation.

Appointee: Duane E. Liebsack, 1702 S. 15 Street, Omaha, NE 68108, (402) 422-0385.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

September 29, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Nebraska Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Carol I. Cope, 4622 Parkland Drive, Kearney, NE 68847, (308) 237-5717.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 6, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Pennie Z. Davis, 8405 Indian Hills Drive, Omaha, NE 68114, (402) 731-3480.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 6, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building

FIRST DAY - NOVEMBER 8, 1989

31

Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Safety Center Advisory Council, requiring legislative confirmation.

Appointee: Laura Acklie, M.D., #3 Bishop Square, Lincoln, NE 68502, (402) 474-4141.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Property Assessment and Taxation Commission, requiring legislative confirmation.

Appointee: John R. Anderson, RR 1, Box 33, Wayne, NE 68787, (402) 375-3513.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 19, 1989

Mr. President, Mr. Speaker

and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Board of Educational Lands and Funds, requiring legislative confirmation.

Appointee: Jane M. Keller, 308 W. Highway 20, Bassett, NE 68174, (402) 684-3565.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 19, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Child Abuse Prevention Fund Board, requiring legislative confirmation.

Appointee: Sarah L. Crawford, 3020 N. 76 Street, Omaha, NE 68134, (402) 978-7193.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

October 31, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Highway Commission, requiring legislative confirmation.

Appointee: George A. Miles, P.O. Box 360, O'Neill, NE 68763,
(402) 336-1220.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 31, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Highway Commission, requiring legislative confirmation.

Appointee: Donna M. Wanitschke, P.O. Box 241, Doniphan,
NE 68832, (402) 845-6565.

This appointment is respectfully submitted for your consideration.

(Signed) Sincerely,
KAY A. ORR
Governor

KAO:tr

October 31, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the State Highway Commission, requiring legislative confirmation.

Appointee: James D. Keenan, P.O. Box 1026, North Platte, NE 69101, (308) 532-4833.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

ATTORNEY GENERAL'S OPINIONS

Opinion No. 89059

DATE: August 30, 1989

SUBJECT: Enforceability of Neb.Rev.Stat. §28-347(1)(2)(3) (Reissue 1985); requirement for notice to parent or legal guardian prior to abortion upon a minor.

REQUESTED BY: Senator Bernice Labedz
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Royce N. Harper, Assistant Attorney General

SUMMARY OF ANSWERS TO QUESTIONS ASKED BY SENATOR LABEDZ

The legal questions addressed here relate to Nebraska Legislation requiring a minor to notify one of her parents before obtaining an abortion. The legal implications of this legislation are complicated and difficult. Therefore, this summary of our reasoning and conclusions may be helpful.

This is where we are now on the legality of Nebraska legislation on parental notification by minors before abortion:

(1) The Nebraska U.S. District Court has ruled Nebraska legislation (Neb.Rev.Stat. §28-347) requiring parental notification by a minor before abortion unconstitutional.

(2) The Eighth Circuit Court of Appeals has ruled similar Minnesota legislation constitutional. This Eighth Circuit Court ruling, which is now on appeal to the U.S. Supreme Court, has the effect of overruling the Nebraska U.S. District Court decision. If the U.S. Supreme Court affirms the Eighth Circuit Court, the Nebraska parental notification legislation is constitutional.

(3) The result right now is that this parental notification issue is in legal limbo. The Eighth Circuit Court has said such legislation is constitutional, but its conclusion will soon be either upheld or reversed by the U.S. Supreme Court. In short, as of this moment the Nebraska legislation is constitutional, but we won't have the final answer until the U.S. Supreme Court acts on the current appeal before it.

Detailed Analysis and Response to
Questions Asked by Senator Labeledz

QUESTION 1: Neb.Rev.Stat. §28-347 which required notice to a parent or legal guardian prior to an abortion upon a minor was held unconstitutional by U.S. Judge Warren Urbom. Does his decision render the statute unenforceable to any plaintiff even though the Legislature never repealed it?

CONCLUSION: Yes.

QUESTION 2: Assuming section 28-347 subsections (1) and (2) are unenforceable, is subsection (3), which was not specifically addressed in Judge Urbom's decision, enforceable?

CONCLUSION: No.

In 1981, the Nebraska State Legislature enacted Neb.Rev.Stat. §28-347. Section (1) requires notice to one of the parents or the legal guardian of a minor prior to abortion upon that minor. Section 2

provides for a "judicial by-pass" to the extent that a court could order a waiver of the notice requirements in the best interests of the minor. Section 3 provides for non-application of the statute where an emergency provides an immediate and grave risk to the life or health of the pregnant minor.

In 1983, the United States District Court for Nebraska declared §§28-347 (1) and (2) unconstitutional, and permanently enjoined the state from enforcing those sections. Orr v. Knowles, CV-81-0-301 (D. Neb. September 19, 1983). However, this decision is no longer controlling because of two cases presently before the U.S. Supreme Court, Hodgson v. Minnesota, 88-1125 and Minnesota v. Hodgson, 88-1309. These two consolidated cases are on appeal to the U.S. Supreme Court from a 1988 Eighth Circuit Court holding (in 853 F.2d 1452) that Minnesota may constitutionally require a minor to give both parents 48 hours notice of an intent to have an abortion if it also provides an alternative bypass procedure. The Eighth Circuit upheld the statute against several constitutional challenges including equal protection.

The Nebraska statute requires notice to only one parent. The Eighth Circuit Court in Hodgson emphasized that the Minnesota statute did not require consent but rather just notice to two parents. Language from the Eighth Circuit Court in Hodgson is particularly significant as we compare the Nebraska and Minnesota statutes and the subsequent Court rulings. The Eighth Circuit Court concluded that the two-parent notice requirement imposed in conjunction with a bypass option did not unduly burden the right of a minor to have an abortion and was, therefore, constitutional. Hodgson (at 1464). It logically follows that if a two parent notice with a judicial bypass is constitutional, then certainly a one parent notice with a judicial bypass also is constitutional.

Therefore, we conclude that the 1983 opinion in the U.S. District Court of Nebraska has been effectively overruled. If the U.S. Supreme Court had not accepted the appeals in Hodgson the Nebraska injunction against enforcement of §28-347 (1) and (2) could have been set aside as the issue would then have been settled law in the Eighth Circuit. However, we do not believe that §28-347 (1) and (2) could be successfully enforced now because a court would await the pending U.S. Supreme Court decision before allowing enforcement.

Section (3) of §28-347 was not specifically enjoined by the U.S. District Court of Nebraska. Section (3) states that §28-347 shall not apply where an emergency situation exists and continuation of the pregnancy provides an immediate and grave risk to the life and health of the minor. Subsection (3) provides the exception to the application

of subsections (1) and (2). Absent subsection (1) and (2), independent enforcement of subsection (3) serves no purpose. It is neither logical nor reasonable to assume the legislature would have passed subsection (3) independent of subsections (1) and (2).

Therefore, we conclude that subsection (3) is not severable from subsection (1) and (2) and that §28-347 (1) (2) (3) as a whole is not enforceable under the terms of the U.S. District Court injunction. However, as we have described above, the validity of this U.S. District Court ruling will be finally determined by the U.S. Supreme Court in the Hodgson cases it is reviewing now.

The opinion from the U.S. Supreme Court in the Hodgson cases will resolve this. If Hodgson is affirmed before enactment of new Nebraska legislation, our office should file a motion in the United States District Court of Nebraska to vacate the September 19, 1983, order which permanently enjoined enforcement of section (1) and (2) of §28-347.

It is important for us to keep on top of the current developments taking place in this crucial area of the law. Therefore, should you desire, we will be pleased to advise you of our further conclusions after the U.S. Supreme Court rules in the Hodgson cases.

(Signed) Respectfully Submitted,
ROBERT M. SPIRE
Attorney General
(Signed) Royce N. Harper
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 89063

DATE: October 12, 1989

SUBJECT: Application of the Nebraska Open Meetings
Law to actions of the University of Nebraska
Board of Regents dealing with the employment
status of Dr. Ronald W. Roskens.

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General

OPINION SUMMARY

- I. The Nebraska Open Meetings Law requires public bodies to hold open meetings unless the subject matter is within one of the Law's specific exemptions. Recently the University Regents held closed sessions dealing with the employment status of Dr. Roskens. Did the Regents violate the Nebraska Open Meetings Law? No, for these reasons:
- 1) The Law allows a closed session only if the public body identifies the closed session's purpose and votes in open meeting to hold the closed session. The Regents did this.
 - 2) The Law allows closed sessions for "evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting". The Regents identified this provision of the law as the purpose of the closed sessions and Dr. Roskens did not request open sessions. The approval of arrangements with Dr. Roskens (a) was made in open meeting, and (b) demonstrated that the closed session actually was a personnel matter within the statute's exception allowing a closed session.
- II. Public officials are stewards of the public interest. As such, they have a profound duty to account to the public for precisely how and why they perform the public's business as they do. This accountability, so essential to responsible functioning of representative government, transcends the limited legal obligations of the Open Meetings Law and other statutes describing governmental procedures. In other words, beyond the strict legal issue of Open Meetings Law compliance, there is the larger issue of public accountability. Thus, although not legally required, the concept of open and accountable government suggests a fuller public explanation than that made by the Regents.

OPINION

You are concerned with the interpretation placed upon the Nebraska Open Meetings Law, Neb.Rev.Stat. §§84-1408 et seq. (Reissue 1987), by the University of Nebraska Board of Regents in connection with the employment status of Dr. Ronald W. Roskens.

You ask if the Open Meetings Law allows an elected body to go into closed session to discuss a personnel matter, to reconvene, and then to vote without discussing the rationale for its actions. You also state your understanding that the purpose of the personnel exclusion in the Open Meetings Law is to protect the reputation of individual public employees involved in any discussions by a public body as opposed to protection of members of the governmental body itself.

We agree that the personnel exception is for the protection of individual employees and not governmental officials. However, we believe that the language of the statute allows a governmental body to meet in closed session concerning personnel matters, and then take a public vote without discussion of its rationale. Our reasoning is set out below.

I. The Facts

The Nebraska Attorney General has specific enforcement responsibilities under the Nebraska Open Meetings Law. See Neb.Rev.Stat. §84-1414 (Reissue 1987). Therefore, the scope of our inquiry concerning Dr. Roskens and the Board of Regents has been broader than the issues raised by your letter. We contacted counsel for the Board of Regents, and asked for an explanation of the events surrounding the employment status of Dr. Roskens as President of the University. We were provided with copies of the Board minutes and other materials together with a legal analysis prepared by University counsel. Those materials establish these facts:

1. On May 12, 1989, the Board of Regents convened in a scheduled meeting, and, by a roll call vote, adopted a motion to hold a closed session to consider "personnel matters which required closed session discussion in order to prevent needless injury to the persons involved" under §84-1410. During this closed session, the Board discussed the performance of Dr. Roskens as President of the University. The Board did not complete its discussion of this subject during this closed session and the Board reconvened in open session.
2. On June 23, 1989, the Board of Regents convened its next scheduled meeting, and by a roll call vote, adopted a motion to hold a closed session to consider "personnel matters which require closed session discussion in order to prevent needless injury to the persons involved" under §84-1410. During this closed session, the Board continued its evaluation of the performance of Dr. Roskens. As that evaluation progressed, it became apparent that there was a possibility that Dr. Roskens might be requested to terminate his employment before the end of his existing contract. Under those circumstances, the Executive Subcommittee of the Board agreed to meet with Dr. Roskens to discuss the various alternatives available to resolve the situation. The Board then ended its closed session and reconvened in open meeting.
3. After the Board meeting on June 23, 1989, the Executive Subcommittee of the Board (consisting of Regents Hoch, Fricke, and Robinson) met privately with Dr. Roskens twice to discuss the situation with him.

4. On July 21, 1989, the Board convened for its next scheduled meeting, and, by a roll call vote, adopted a motion to hold a closed session to consider "personnel matters which require closed session discussion in order to prevent needless injury to the persons involved" under §84-1410. During this closed session, the Executive Subcommittee reported to the Board concerning its discussions with Dr. Roskens. After further discussion, Regents Hoch and Hansen, together with University counsel, agreed to meet with Dr. Roskens again to pursue further the alternatives available to them. The Board reconvened in open session on July 22, 1989. On July 22, 1989, and on July 31, 1989, Regents Hoch and Hansen met privately with Dr. Roskens. At the latter meeting, they assembled a tentative outline for a proposal to resolve the situation concerning the continued employment of Dr. Roskens.
5. On July 31, 1989, Regent Hoch, as Chairman of the Board, asked the University Corporation Secretary to issue notice of an emergency meeting of the Board of Regents to convene at 7:00 p.m. that evening, for the express purpose of evaluating and considering the employment status of the President. The Board convened that evening, and, by a roll call vote, adopted a motion to hold a closed session for the purpose of evaluating and considering the employment status of the President. During this closed session, Regents Hoch and Hansen reported to the Board concerning their various meetings with Dr. Roskens and the general terms of the proposal they had discussed with him. Following this report and discussions by the Board, the Board reconvened in open session. At that time, a written proposal was presented to the Board, and the Board, by a vote of seven in favor and one opposed, adopted a motion to approve an agreement with Dr. Roskens providing:
 - a. Effective August 1, 1989, Dr. Roskens would be appointed President Emeritus.
 - b. Effective August 1, 1989, Dr. Roskens would be appointed Professor of Higher Education-University of Nebraska with tenure until June 30, 1991.
 - c. Dr. Roskens would vacate the Office of President effective July 31, 1989.
 - d. Dr. Roskens' contract of employment would be honored as follows: current salary would be paid through June 30, 1991, together with the standard University employment fringe benefits which are retirement, social security, accrued annual vacation leave, health and dental

- insurance, health and dependant reimbursement account, life insurance, and disability insurance.
- e. The terms set forth above would be reduced to a written agreement which would include a provision that neither party would pursue legal recourse against the other except in the unlikely event of non-compliance with any portion of the agreement.
 6. On August 23, 1989, Dr. Roskens and the Board executed a written agreement containing the terms of their settlement according to the action of the Board approved in open session at its emergency meeting on July 31, 1989. This agreement has been filed of record as a public document with the Corporation Secretary of the University.
 7. At its regularly scheduled meeting on September 8, 1989, the Board, acting in open session, adopted a series of motions ratifying its previous actions concerning Dr. Roskens and ratifying the agreement and mutual release executed by them on August 23, 1989.
 8. Dr. Roskens did not at any time during the various meetings described above request that the Board convene in a public meeting for the purpose of evaluating his performance as President of the University or discussing whether his employment as President would continue to the end of the term of his employment contract. The various votes to go into closed session described above were entered in the minutes of the Board of Regents.

II. The Law

The pertinent statute is Neb.Rev.Stat. §84-1410 (Reissue 1987), which provides:

- (1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. Closed sessions may be held for, but shall not be limited to, such reasons as: (a) Strategy sessions with respect to collective bargaining, real estate purchases or litigation; (b) discussion regarding deployment of security personnel or devices; (c) investigative proceedings regarding allegations of criminal misconduct; or (d) evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting. Nothing in this section shall

permit a closed meeting for the discussion of the appointment or election of a new member to any public body.

- (2) The vote to hold a closed session shall be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the minutes as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken.

III. Legal Analysis

The facts set out above demonstrate that the Board of Regents did comply with the strict provisions of §84-1410. In each instance where there was a closed session of the Board, that session was preceded by an affirmative vote of the Board as required by the statute. Moreover, no formal action was taken in any instance until the Board reconvened in an open, public session. We believe the discussion of Dr. Roskens' job performance falls squarely within the exception contained in §84-1410(d) which allows a closed session for "evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of the person." In addition, actions by the Executive Subcommittee were not covered by the Open Meetings Law under §84-1409, which provides that the Open Meetings Law shall not apply to subcommittees of public bodies unless such subcommittees are holding hearings, making policy or taking formal action. Consequently, we do not believe that the Board's actions involving Dr. Roskens constituted violation of our Open Meetings Law.

Based upon certain language in Grein v. Board of Education, 216 Neb. 158, 343 N.W.2d 718 (1984), you question whether an elected body can go into closed session, discuss a personnel matter, and then conduct a public vote with no explanation of the rationale underlying its decision. We do not read the Grein case to prevent such an action. Grein involved a situation where the initial closed session was clearly impermissible under the Open Meetings Law. Our Nebraska Supreme Court indicated that a public vote after such an improper closed session, with no explanation of the vote, could not cure that statutory violation. In contrast, we believe the situation concerning Dr. Roskens and the Board of Regents involves a legitimate use of the open meetings exception for personnel discussions. To conclude that such a proper use of the personnel exception would require a detailed

public explanation before a vote would negate the purpose of the exception. In other words, if protection of the reputation of the individual involved requires confidential discussion by the public body, how can that confidentiality be maintained if a detailed public explanation of the body's action is necessary before a vote? Such a detailed public explanation would defeat the confidentiality of the closed discussion.

CONCLUDING THOUGHTS

Although we have concluded that the Regents did not violate the Open Meetings Law under the specific circumstances here, we emphasize the importance of this language from the Grein case:

The Nebraska Public Meetings Laws are a statutory commitment to openness in government. As a result of open meetings, there will be development and maintenance of confidence, as well as participation, in our form of government as a democracy. The public can observe and within proper limits participate in discussions and deliberations of a public body.

. . . Public meetings laws are broadly interpreted and liberally construed to obtain the objective of openness in favor of the public. Provisions permitting closed sessions and exemption from openness of a meeting must be narrowly and strictly construed. 216 Neb. at 163-165, 343 N.W.2d at 722, 723 (citations omitted).

Our Open Meetings Law clearly involves a commitment to open government. Therefore, the rule for any public agency must be, "[i]f a public body is uncertain about the type of session to be conducted, open or closed, bear in mind the policy of openness promoted by the Public Meetings Laws and opt for a meeting in the presence of the public." Grein at 168, 343 N.W.2d at 724. This means that a public body should resolve any doubts it has in favor of open sessions. In other words, when in doubt, play it safe: punt.

All public officials, including the Board of Regents, remain accountable to the public for their actions even if, as here, they have in a strict legal sense properly held a closed session of the public body. If nothing else, the public will assess the propriety of their actions at the ballot box. As a result, even in instances where there is a legally legitimate closed session, public officials should attempt to provide some type of explanation for their actions, albeit limited. The public is entitled to such an explanation.

After all, when performing our public duties, we public officials owe our primary allegiance to the public, not ourselves.

(Signed) Sincerely,
ROBERT M. SPIRE
Attorney General

cc: Mr. Patrick J. O'Donnell

Clerk of the Legislature

Opinion No. 89065

DATE: November 2, 1989

SUBJECT: Constitutionality of Legislative Exemption from
Personal Property Tax for Railroad Rolling
Stock.

REQUESTED BY: Senator Jerome Warner
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on two questions relating to the constitutionality of legislation you intend to introduce in response to the Nebraska Supreme Court's decision in Northern Natural Gas Co. v. State Board of Equalization and Assessment, 232 Neb. 806, 443 N.W.2d 249 (1989) {"Northern"}. The legislation you seek to propose would provide a statutory exemption from personal property taxation for "railroad rolling stock owned or leased by railroads and used in railroad transportation." Your initial question concerns whether the classification and exemption of rail transportation personal property of this nature would "address the court's concerns" in the Northern case. In order to respond to this question, it is necessary initially to analyze the basis for the court's decision in Northern.

In Northern, the court, relying on its interpretation of certain federal court litigation¹ challenging the imposition of taxes under Nebraska law on rail transportation personal property brought pursuant to the anti-discrimination provisions of Section 306(1)(d) of the Railroad Revitalization and Regulatory Reform Act ("the 4-R Act") (codified at 49 U.S.C. §11503(b)(4)), determined that, as the levy and collection of taxes on the personal property of certain railroads and car companies had been either permanently or preliminarily enjoined by federal court interpretation and application of the Act, the portion of Northern's unit value consisting of personal property (specifically pipelines) was also required to be excluded from taxation for the year 1988. Northern, 232 Neb. at 809-17, 443 N.W.2d at 252-56. In particular, the court's opinion states as follows:

Article VIII, §1, of the Nebraska Constitution provides in relevant part that except for motor vehicles, "{t}axes shall be levied by valuation uniformly and proportionately upon all

tangible property” It would seem that no question exists that if the Board arbitrarily undervalues a particular class of property so as to make another class of property disproportionately higher, or achieves the same result because of legislative action, this court must correct that constitutional inequity by lowering the complaining taxpayer’s valuation to such an extent so as to equalize it with other property in the state. See, Kearney Convention Center v. Board of Equal., 216 Neb. 292, 344 N.W.2d 620 (1984); Banner County v. State Bd. of Equal., 226 Neb. 236, 411 N.W.2d 35 (1987). This being the case, no logical reason exists why the same requirement of valuation reduction should not be imposed when the disproportionality is brought about by a final judgment of the federal court exempting the personal property of the railroads and car companies from the imposition of a state tax.

The state, by not taxing the personal property of railroads and car companies, although acting involuntarily and under compulsion of federal law, nevertheless, by complying with that mandate, has denied Enron equal protection of the law contrary to the 14th amendment to the U.S. Constitution.

* * *

As we have previously stated, it makes no difference if the undervaluation of the property of the railroad and car companies comes about because of deliberate action by the Board, legislative enactment, or the final and binding judgment of the federal courts. The conclusion remains the same: The equal protection clause of the 14th amendment mandates that the same result be reached with respect to the personal property of Enron as that in the case of the railroad and car companies.

Id. at 815-16, 443 N.W.2d at 255-56. (Emphasis added).

The foregoing passages from the opinion in Northern reveal the court determined it was required to reduce the personal property component of Northern’s unit value to the level of value of the personal property of railroads and car companies (even though such property was not taxable by virtue of federal court orders) because the failure to do so would result in a lack of equalization in the valuation of taxable property in the same class, in contravention of the uniformity requirement of Article VIII, Section 1, of the Nebraska Constitution, and the equal protection clause of the United States Constitution.² The cases cited by the court in reaching its decision, including Kearney Convention Center v. Board of Equalization, 216 Neb. 292, 344 N.W.2d 620 (1984) and Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923), reinforce the conclusion that the opinion in Northern should be interpreted as being limited to application of the settled proposition that intentional

and systematic undervaluation of other taxable property in the same class as the taxpayer's property violates the equal protection clause, and that the taxpayer suffering such discrimination has the right to have his assessment reduced to the percentage of true value at which comparable property in the same class is assessed.

Under your proposed legislation, rail transportation personal property in the form of rolling stock would be exempted and classified apart from the class of tangible property subject to taxation in Nebraska. Authority for the classification and exemption of personal property in this manner is provided in Article VIII, Section 2, of the Nebraska Constitution, which provides: "The Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation." The Nebraska Legislature, exercising the authority granted under Article VIII, Section 2, has exempted certain types of personal property from taxation, including the following: Agricultural income-producing machinery and equipment; business inventory; feed, fertilizer, and farm inventory; and grain, seed, livestock, poultry, fish, honeybees, and fur-bearing animals. Neb.Rev.Stat. §77-202(6) - (9) (Cum.Supp. 1988).

In Stahmer v. State, 192 Neb. 63, 218 N.W.2d 893 (1974), the Nebraska Supreme Court upheld the validity of the exemptions provided for personal property in the nature of business inventories, agricultural machinery and equipment, and agricultural products (currently contained in §77-202 (6)-(9)) against numerous constitutional challenges. Rejecting contentions that the exemptions violated the principle of uniform taxation under Article VIII, Section 1, and that the classifications established were unreasonable, the court stated:

Plaintiffs also urge that the statutes are violative of Article III, section 18, and Article VIII, sections 1, 2, and 4. Constitution, in that the classifications exempted are unreasonable, the act serves to exempt certain taxpayers from payment of their proportionate share of taxes, prevents the levy of taxes by valuation uniformly and proportionately, and is discriminatory. The 1970 amendment of Article VIII, section 2, to provide "The Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation" specifically confers broad authority on the Legislature to classify and exempt personal property from taxation. (Emphasis supplied.) The amended portion of Article VIII, section 2, represents a special constitutional provision adopted later than, and with full knowledge of, the constitutional provisions relied on by plaintiffs. Within the plain ambit of its meaning and purpose

it stands supreme and effectively negates plaintiffs' contentions, with the possible exception of the one dealing with the reasonableness of the classifications exempted.

* * *

In view of the recent amendment of Article VIII, section 2, Constitution, it is doubtful if the statutes are subject to challenge as violating Article III, section 18, dealing with special laws, or Article VIII, section 1, requiring uniform taxation. In any event, we do not find the classifications set forth in the act to be unreasonable.

* * *

The exemptions granted pertain to property used in agricultural production, the products thereof, and business inventories. They are granted to all persons engaged in the lines of endeavor mentioned. There can well be public policy reasons for the grant of these exemptions.

Id. at 67-69, 218 N.W.2d at 896-97 (Emphasis in original).

Stahmer recognizes the general rule that classifications of property for tax purposes are permissible if based ". . . on some reason of public policy, some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified." 192 Neb. at 68, 218 N.W.2d at 896 (quoting Shear v. County Board of Commissioners, 187 Neb. 849, 195 N.W.2d 151 (1972)).

The decision in Stahmer stands for the proposition that, to the extent the Legislature has acted to classify and exempt personal property under the authority granted by virtue of Article VIII, Section 2, the provision relating to uniformity of taxation in Article VIII, Section 1, is not implicated. The only issue recognized by the court in Stahmer as relevant in assessing the constitutionality of the classification and exemption of personal property pursuant to this constitutional authority was the reasonableness of the classification adopted by the Legislature.

In the event the Legislature were to enact legislation similar to your proposal by virtue of the authority provided under Article VIII, Section 2, establishing a class of exempt personal property consisting of rolling stock, the result in Stahmer reveals the adoption of an exemption of this nature would not contravene the constitutional requirement of uniformity of taxation in Article VIII, Section 1. Rather, the question which would remain is whether such a classification would satisfy the requirement of reasonableness articulated in Stahmer. It is important at this point to note the distinction between this situation and that addressed by the court in Northern. In Northern, the court apparently concluded that, while

the Legislature had the authority to classify and exempt personal property (including rail transportation personal property) from the class of tangible property subject to the requirement of uniform taxation, the Legislature had not enacted legislation pursuant to Article VIII, Section 2, establishing as a matter of state law a separate classification exempting the personal property at issue. Accordingly, to the extent that rail transportation personal property had not been exempted from the class of taxable property by legislative act, the court in Northern, by virtue of its refusal to discuss the impact of Article VIII, Section 2, evidently determined that, to the extent such property remained in the same class under Nebraska law as the taxable personal property of Northern, it was required to equalize the valuation of the personal property component of Northern's unit value at the level of value of the personal property of railroad and car companies resulting from federal court judgments entered under the 4-R Act. If a statutory exemption were to be created for rail transportation personal property by virtue of the enactment of your proposed exemption of rolling stock, however, such legislation should eliminate any claim by taxpayers asserting a right to have the value of their taxable property equalized with personal property classified by statute as exempt, as, under Stahmer, the state constitutional requirement of uniformity applies only within the class of taxable tangible property, and does not encompass personal property which has been classified and exempted pursuant to Article VIII, Section 2.

As to the reasonableness of the classification established by your proposed legislation exempting rolling stock, we believe a compelling argument may be advanced in support of the constitutionality of such a classification. Beginning in 1987, various federal court lawsuits have been initiated challenging the taxation of the personal property of rail carriers under the provisions of Section 306(1)(d) of the 4-R Act. As a result of the final judgment in Trailer Train Co. v. Leuenberger, CV87-L-29 (D. Neb., Dec. 11, 1987), aff'd No. 88-1118 (8th Cir., Dec. 19, 1988), cert. denied sub nom. Boehm v. Trailer Train Co., _____ U.S. _____, 109 S.Ct. 2065, 104 L.Ed.2d 630 (1989), the federal courts have continued to grant preliminary and permanent injunctive relief for various tax years in other federal court actions involving railroads and car companies challenging the imposition of taxes on their personal property. It appears imminently reasonable for the Legislature, in response to federal court determinations striking down Nebraska's current system of classifying and taxing rail transportation personal property, to attempt to create a class of exempt personal property (permissible under state law) which may satisfy the provisions of the federal 4-R Act.³ As it is axiomatic that the state, by virtue of the supremacy clause of the United States

Constitution (U.S. Const. Art. VI, Section 2, cl.2), is bound to comply with the requirements of federal law, the establishment of an exemption for rolling stock by the Nebraska Legislature appears to constitute a reasonable response to the current dilemma facing the State of Nebraska as a result of federal court interpretations of the impact of the 4-R Act in relation to Nebraska's personal property tax system. While action of this nature may not be the only possible option available to the Legislature, it would appear that, given the minimal level of constitutional scrutiny appropriate in assessing such a claim of reasonableness, the classification you propose should be sustained as within the prerogative of the Legislature.

Apart from consideration of the constitutionality of the establishment of a separate classification and exemption of rolling stock from personal property tax as a matter of state law, it is necessary to consider whether legislation providing differential tax treatment between property of this nature and other property complies with the requirements of the equal protection clause of the United States Constitution. In this regard, assuming the Legislature were to establish a separate classification exempting rolling stock from taxation, the only federal constitutional question raised in regard to this issue under the equal protection clause would be whether a "rational basis" exists to support the Legislature's classification of such property for tax purposes.

The equal protection clause "imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation." Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 526 (1959). In structuring their internal tax structures, "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973). It is inherent in a state's power to tax that it be free to select the subjects of taxation, and to grant exemptions. Carmichael v. Southern Coal and Coke Co., 301 U.S. 495 (1937). In order for a state tax classification or scheme to withstand scrutiny under the equal protection clause, it is necessary only to consider whether the challenged classification or tax is rationally based and related to a legitimate state purpose. Exxon Corp. v. Eagerton, 462 U.S. 176 (1983). "A state law is not arbitrary though it 'discriminate{s}' in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution." Kahn v. Shevin, 416 U.S. 351, 355 (1974) (quoting Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 528 (1959)). As the Court stated in its recent decision in Allegheny Pittsburgh Coal Co. v. County Commission of Webster County,

_____, U.S. _____, _____, 109 S.Ct. 633, 638, 102 L.Ed.2d 688, 697 (1989): "The States, of course, have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assigned to each class a different tax burden so long as those divisions and burdens are reasonable."

In light of the foregoing, it is doubtful that the Nebraska Supreme Court, in the face of such United States Supreme Court interpretations of the equal protection clause, would invalidate a state taxing scheme which, under authority of the state constitution as implemented by legislative enactment, provided for the separate classification for tax purposes of rail transportation property in the nature of rolling stock and other taxable property. As noted previously, the only appropriate constitutional inquiry in this regard relates to the existence of a reasonable or rational basis for a legislative classification drawn upon such lines. A legislative attempt to comply with federal court determinations as to the interpretation and application of the federal 4-R Act with regard to the classification and taxation of rail property in Nebraska should provide a sufficient reasonable basis to satisfy any constitutional concerns in this regard. Indeed, courts from other states have rejected equal protection challenges brought by virtue of the different classification and taxation of rail property under state law resulting from application of the 4-R Act. Federal Express Corp. v. Tennessee State Board of Equalization, 717 S.W.2d 873 (Tenn. 1986); State v. Colonial Pipeline Co., 471 So.2d 408 (Ala.Civ.App. 1984), writ quashed Ex Parte Colonial Pipeline Co., 471 So.2d 413 (Ala. 1985), app. dismissed 474 U.S. 936 (1985).

In sum, in response to your initial question, it is our conclusion that your proposal to exempt by statute certain rail transportation personal property (consisting of rolling stock) is not, per se, unconstitutional on state or federal grounds, and, if challenged, we believe such legislation could be defended as consistent with both state and federal constitutional requirements relating to the reasonableness of the classifications created by virtue of such legislation. The establishment of a separate class of exempt property of this nature should eliminate the basis for the Nebraska Supreme Court's apparent application in Northern of the mandate that taxable property in the same class must be valued uniformly and proportionately, as your proposed legislation would remove rolling stock from the class of taxable tangible property under Nebraska law. Given the lack of clarity and guidance in the Northern decision, however, we cannot state with certainty that our court would uphold the reasonableness of a classification of this nature, nor can we be certain that the court continues to adhere to the principles enunciated

in Stahmer with regard to the broad authority of the Legislature to classify and exempt personal property under Article VIII, Section 2, of the Nebraska Constitution, without regard to the uniformity clause.

In addition, you ask whether the proposed exemption of personal property consisting of rolling stock may be enacted with an effective date for the exemption that would occur before disposition of the numerous equalization cases for the 1989 tax year currently pending before the Nebraska Supreme Court, during the special session to be conducted in 1989, or during the next regular session of the Legislature in 1990. Specifically, your question concerns whether enactment of an exemption of this nature may be made retroactive for the 1989 tax year.

It is well established that "{a} legislative act will operate only prospectively and not retrospectively, unless the legislative intent and purpose that it should operate retrospectively is clearly disclosed." Brown v. Sullivan, 195 Neb. 729, 730, 240 N.W.2d 51, 52 (1976). Furthermore, our court has held that "{a} legislative act will not be permitted, even if an attempt so to do is disclosed, to operate retrospectively where it will have the effect to invalidate or impair the obligation of contracts or interfere with vested rights." Travelers Ins. Co. v. Ohler, 119 Neb. 121, 125, 227 N.W. 449, 450 (1929).

To the extent that enactment of a retroactive exemption of rolling stock effective for tax year 1989 may impact the appeals from the State Board of Equalization and Assessment pending in the Nebraska Supreme Court, it is necessary to consider whether such legislation would operate to impair any vested right. In City of Fremont v. Dodge County, 130 Neb. 856, 865, 266 N.W. 771, 775 (1936), the court stated: "{I}t is truly said that the bringing of a suit vests in a party no right to a particular decision; and, his case must be determined on the law as it stands, not when the suit is brought, but when the judgment is rendered." This is consistent with the general rule that retroactive legislation affecting litigation will not be held invalid where a final judgment has not been rendered. 2 Sutherland, Statutory Construction §41.08 (4th ed. C.D. Sands 1973). Therefore, it appears that, to the extent that retroactive application of the exemption for rolling stock may impact the outcome of pending judicial matters, this would not, *per se*, render such legislation invalid, as no impairment of a vested right would occur if legislative action were taken prior to any final judgment in such actions.

"It is well settled that the mere retroactivity of a statute affecting taxation does not render it unconstitutional. Such a statute is valid if it is not arbitrary and does not disturb vested rights, impair contractual obligations, or violate due process." Colonial Pipeline

Co. v. Commonwealth, 206 Va. 517, 521, 145 S.E.2d 227, 231 (1965), app. dismissed 384 U.S. 268 (1966). Generally, the validity of retroactive tax legislation is assessed in terms of reasonableness, the focus being on whether the retroactive feature is arbitrary and burdensome, or involves an undue period of time. See generally 2 Sutherland, Statutory Construction, supra, §41.10 See also Welch v. Henry, 305 U.S. 134 (1938). The retroactive tax legislation you propose appears to meet these criteria. The legislation exempting personal property of this nature is constitutionally authorized pursuant to Article VIII, Section 2, and is designed to bring the state's classification and taxation of rail transportation property into compliance with a federal court determination invalidating Nebraska's tax on rail personal property under the 4-R Act. In addition, as the situation sought to be remedied by this legislation was brought about by a final court determination occurring near the end of the Legislature's regular session during 1989, it is reasonable to permit the Legislature to now take action to be effective within the current tax year in an attempt to adopt a legislative remedy to reduce or mitigate potential revenue shortfalls resulting from pending or future court actions. Finally, as noted previously, retroactive legislative action such as you propose would not infringe any vested right, as that term does not encompass judicial matters which have not proceeded to final judgment.

One area of concern as to the constitutionality of the proposed retroactive exemption from personal property tax for rolling stock is whether such retrospective application may result in a violation against the prohibition in Article VIII, Section 4, of the Nebraska Constitution, barring legislative action resulting in the release, discharge, or commutation of taxes. Article VIII, Section 4, provides, in pertinent part:

... the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, no shall commutation for such taxes be authorized in any form whatever;”

Initially, it should be noted that the court in Stahmer rejected the contention that the statutory exemptions for business inventory, agricultural machinery and equipment, and agricultural products violated the prohibition in Article VIII, Section 4. 192 Neb. at 67, 218 N.W.2d at 896. The court emphasized the broad authority granted the Legislature to classify and exempt personal property in Article VIII, Section 2, stating: “The amended portion of Article VIII, Section 2, represents a special constitutional provision adopted later

than, and with full knowledge of, the constitutional provisions relied upon by plaintiffs. Within the plain ambit of its meaning and purpose it stands supreme and negates plaintiffs' contentions, with the possible exception of the one dealing with the reasonableness of the classifications exempted." Id.

Assuming, arguendo, the prohibition in Article VIII, Section 4, is applicable in considering the validity of the retroactive effect proposed with regard to legislation exempting railroad rolling stock, it appears that no violation of this provision would arise with regard to application of the exemption of rolling stock of car companies if such legislation were enacted prior to December, 1989, as no levy is made on car company property until such time. It has been recognized that "... {p}roperty is taxed when the tax is levied, and not when it is valued by the assessor." Hardin v. Pavlat, 130 Neb. 829, 830, 266 N.W. 637, 638 (1936); See also American Province of the Servants of Mary Real Estate Corp. v. County of Douglas, 147 Neb. 485, 23 N.W.2d 714 (1946). Thus, as a tax liability is not created until after both assessment and levy, any legislation exempting rolling stock which would apply to car companies, enacted prior to levy, would not implicate Article VIII, Section 4, as no tax would even exist which could be deemed released or discharged by such exemption.

With regard to railroads, however, property tax levies on the full equalized valuations of railroads in the state (other than certain railroads which obtained a temporary restraining order in federal court against levy on the personal property component of their valuations) were made in September, 1989. Arguably, in the event that an exemption for railroad rolling stock were enacted after the levy date for railroad property, but applied retroactively to be effective for the 1989 tax year, such an exemption may be construed to represent an unconstitutional release or discharge of a tax within the meaning of Article VIII, Section 4. It may be possible for the Legislature to alleviate any such concern by limiting the retroactive effect for 1989 to rolling stock which has not been subject to any levy for this tax year, which would include both car company rolling stock and personal property of railroads upon which no levy has been made by virtue of federal court order.

In conclusion, we recognize that the result in Northern, as well as events occurring subsequent thereto, have raised substantial concern as to the stability and certainty of Nebraska's current property tax system. Your proposed legislation addresses such concern in a manner which recognizes the need for immediate legislative action to deal with this situation. Based on the matters previously discussed, we believe that, subject to the caveats previously noted, retroactive

enactment of the legislation you propose should satisfy the current dictates of the 4-R Act, and, consequently, may remove the basis for equalization relief raised on the basis of the decision in Northern with respect to tax year 1989 and in the future.

¹ Trailer Train Co. v. Leuenberger, CV87-L-29 (D. Neb. Dec. 11, 1987), aff'd No. 88-1118 (8th Cir. Dec. 19, 1988), cert. denied sub nom. Boehm v. Trailer Train Co., _____ U.S. _____, _____ S.Ct. _____, 104 L.Ed.2d 630 (1989); Burlington Northern R.R. Co. v. Leuenberger, CV87-L-565 (D. Neb. Dec. 10, 1987); Oklahoma Gas & Electric Co. v. Leuenberger, CV88-L-52 (D. Neb. Jan. 26, 1988).

² It is not clear from the court's opinion in Northern that it based its decision in this regard on consideration of the uniformity clause of Article VIII, Section 1, independent of its clear reliance on the Equal Protection Clause of the United States Constitution.

³ We note that the classification of exempt personal property set forth in your proposed legislation is to be limited to "railroad rolling stock owned or leased by railroads and used in railroad transportation." It is our understanding that a classification of this nature would include all car company personal property currently taxed pursuant to Neb.Rev.Stat. §77-624 et seq. (Reissue 1986), and would equate to application of an exemption of approximately 75 to 80 per cent of the personal property component of railroads operating in the state. We believe the establishment of an exemption of this nature would enable the state to successfully defend any future claim of discriminatory taxation of rail transportation personal property which may be brought pursuant to the current version of Section 306(1)(d).

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

REPORTS

The following reports were received by the Legislature:

Minutes of the Board of Public Roads Classifications and Standards for May, June, July, and September, 1989.

Semi-annual report from the Department of Environmental Control, showing the financial status of Program #518, Wastewater Construction Grants in accordance with Section 81-1533 Reissue Revised Statutes of Nebraska, 1943.

Statement of deposits to the Highway Cash Fund and Roads Operation Cash Fund for the calendar months of May, June, July, August, and September, 1989 from the Nebraska Department of Roads in compliance with Section 66-476, R.S. Supp. 1988.

Quarterly reports from the Nebraska Department of Roads for the Nebraska State Highway Commission for June and September, 1989.

Audit reports from the Auditor of Public Accounts for the following: Nebraska Coordinating Commission for Postsecondary Education; Nebraska Department of Labor; Military Department; Nebraska Department of Roads; Nebraska Public Service Commission; Nebraska Commission on Law Enforcement and Criminal Justice; State Fire Marshal; Nebraska Equal Opportunity Commission; State Treasurer of Nebraska; Board of Trustee - Nebraska State Colleges; Nebraska Gasohol Committee; Department of Education; Department of Revenue; Department of Insurance; Nebraska Investment Council; Nebraska Oil and Gas Conservation Commission; Department of Agriculture; Department of Motor Vehicles; Worker's Compensation Court; Nebraska Supreme Court; Department of Public Institutions; Nebraska Commission for the Hearing Impaired; Nebraska Arts Council; Nebraska Library Commission; Nebraska Beef Industry Development Board; Department of Health; Department of Environmental Control; Nebraska Power Review Board; Accountability and Disclosure Commission; Board of Engineers and Architects; Department of Social Services; Nebraska Natural Resources Commission; Nebraska State Patrol; Nebraska State Patrol - Drug Control Cash Funds; Nebraska Power Review Board; Department of Correctional Services; Nebraska Beef Industry Development Board; Nebraska Wheat Development, Utilization and Marketing Board; Board of Pardons; Motor Vehicle Industry Licensing Board.

1988 annual report, "Traffic Accident Facts" from the Highway Safety Division, Nebraska Department of Roads.

Final report of the Site Identification Process for the Central Interstate Compact Low-level Radioactive Waste Disposal Facility prepared by the US Ecology, Inc.

Reports covering the financial condition of the Natural Gas Revolving Loan Fund for the quarter ending June 30, 1989 and September 30, 1989 from the Nebraska Energy Office pursuant to Sec. 19-4617, R.R.S. 1943.

Report of examination of State of Nebraska Auditor of Public Accounts in accordance with Statute 81-106 from the Nebraska Department of Revenue.

Cost allocation plan from the Department of Administrative Services Central Data Processing for fiscal year 1990.

Reports of loans made under the Agricultural Division of the Nebraska Investment Finance Authority pursuant to Section 45 of LB 626, 1983.

Annual report from the State Job Training Coordinating Council, Department of Labor.

Annual report from the Nebraska Department of Social Services.

Annual Report and Plan of Work from the Natural Resources Commission for the Nebraska State Water Planning and Review Process in accordance with Section 2-15,106, Nebraska Revised Statutes.

Annual report from the Nebraska State Historical Society.

Annual budgetary report from the Department of Administrative Services, Accounting Division.

Annual report from the Nebraska Department of Economic Development in accordance with 81-1201.11, Nebraska Statutes (LB 965, 1986 Session).

Report of the five year plan from the Nebraska Indian Commission.

Final report from the Natural Resources Commission in accordance with Section 2-3203.02 R.R.S., 1943.

Report on the Nebraska School Weatherization Program from the Nebraska Energy Office pursuant to LB 727, 1989.

Third annual Nebraska Educational Telecommunications Commission report to the Legislature's Education Committee concerning of Nebraska public radio development.

Report to the Appropriations Committee regarding changes made to the University's Retirement Plan in response to the Tax Reform Act pursuant to LB 813, 1989.

NATURAL RESOURCE DISTRICT REPORTS

In compliance with Section 2-3262 (R.R.S. 1943) a summary of all fees paid to date during calendar year 1988 to attorneys, lobbyists, and public relations representatives is indicated below by individual and by amount paid thereto.

DISTRICT	FEE
Middle-Missouri	
Golby C. Uhler	2,896.50
Papio	
Paul F. Peters	
Gast & Peters, Attorneys	43,597.67
Richard A. Lombardi	
American Communications Group	6,500.00
Raymond B. Simon	
Tietjen & Simon	6,500.00

COMMUNICATIONS

Received copy of House Joint Resolution 7 from the State of Iowa in regard to the method of increasing the compensation to members of Congress.

Received copy of House Concurrent Resolution 18 from the State of Texas in regard to the United States Flag.

MESSAGE FROM THE SECRETARY OF STATE

November 3, 1989

Mr. President, Mr. Speaker and
Members of the Legislature

State Capitol
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that the following appointment requires legislative confirmation:

J. L. Spray, 2540 Washington, Lincoln, NE 68502,
Appointment to the Nebraska Accountability and Disclosure
Commission, for a six year term ending June 30, 1995.

This appointment was made by me, pursuant to the provisions of Sections 49-14,105, 49-14,106, 49-14,110, 49-14,111, and 49-14,112.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) ALLEN J. BEERMANN
Secretary of State

XC: J. L. Spray
Accountability and Disclosure Commission
Patrick O'Donnell
Senator Dennis Baack

MOTION - Notify Governor

Mr. Barrett moved that a committee of five (5) be appointed to call upon the Governor and advise her that the Legislature is organized and ready for the transaction of business, and to report back to the Legislature with any message she may have.

The motion prevailed.

The Chair appointed Messrs. L. Johnson, Kristensen, Wehrbein, Mmes. Labedz, and Crosby to serve on said committee.

The Committee escorted Governor Kay Orr to the rostrum where she spoke to the members of the Legislature.

The Committee escorted Governor Kay Orr from the Chamber.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 1. Introduced by Speaker Barrett, 39th District, at the request of the Governor.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-103, 77-104, and 77-105, Reissue Revised Statutes of Nebraska, 1943; to redefine the terms real property, real estate, personal property, and tangible personal and intangible personal property as prescribed; to state intent; to provide an operative date; to provide severability; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 2. Introduced by Speaker Barrett, 39th District, at the request of the Governor.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-207, 77-1727, and 77-1744, Reissue Revised Statutes of Nebraska, 1943, section 77-510, Revised Statutes Supplement, 1988, and sections 77-1510, 77-1734.01, 77-1735, 77-1775, and 77-1775.01, Revised Statutes Supplement, 1989; to change provisions relating to collection and payment of personal property taxes; to define and redefine terms; to eliminate a penalty and to provide a penalty; to prevent suspension of tax collection and distribution as prescribed; to change provisions relating to claims for refund for illegal taxes and unconstitutional taxes as prescribed; to harmonize provisions; to provide an operative date; to provide severability; to repeal the original sections, and also sections 77-1726 and 77-1736.10, Reissue Revised Statutes of Nebraska, 1943, and section 77-1736.04, Revised Statutes Supplement, 1989; and to declare an emergency.

LEGISLATIVE BILL 3. Introduced by Speaker Barrett, 39th District, at the request of the Governor.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-first Legislature, First Special Session, 1989; and to declare an emergency.

LEGISLATIVE BILL 4. Introduced by Haberman, 44th District.

A BILL FOR AN ACT relating to railroads; to amend section 74-1320, Reissue Revised Statutes of Nebraska, 1943; to increase the

excise tax on railroads transporting freight; and to repeal the original section.

LEGISLATIVE BILL 5. Introduced by Haberman, 44th District.

A BILL FOR AN ACT relating to railroads; to amend section 74-1320, Reissue Revised Statutes of Nebraska, 1943; to increase the excise tax on railroads transporting freight; and to repeal the original section.

LEGISLATIVE BILL 6. Introduced by Haberman, 44th District.

A BILL FOR AN ACT relating to sales and use taxes; to amend section 77-2704.01, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2702 and 77-2704, Revised Statutes Supplement, 1989; to redefine terms; to change provisions relating to railroad rolling stock; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 7. Introduced by Warner, 25th District.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-602, 77-628, 77-631.02 to 77-631.04, 77-1249.01, and 77-1342, Reissue Revised Statutes of Nebraska, 1943, and section 77-202, Revised Statutes Supplement, 1988; to state intent; to exempt railroad rolling stock from the personal property tax; to define and redefine terms; to transfer provisions relating to collection of delinquent taxes; to eliminate provisions relating to taxation of railroad rolling stock; to harmonize provisions; to provide an operative date; to provide severability; to repeal the original sections, and also sections 77-624 to 77-627, 77-629 to 77-631.01, and 77-633, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

RESOLUTIONS

LEGISLATIVE RESOLUTION 1. Introduced by McFarland, 28th District.

WHEREAS, there is a personal property tax crisis in Nebraska; and

WHEREAS, the state faces a potential two hundred twenty-two million dollars loss in tax revenue; and

WHEREAS, the tax crisis places the state's fiscal stability in jeopardy; and

WHEREAS, due to the recent Supreme Court decision Northern Natural Gas Co. v. State Board of Equalization and Assessment, 232 Neb. 806, 443 N.W.2d 249 (1989), the state's tax system is threatened by future erosion and lawsuits; and

WHEREAS, the chaotic tax system is unfair to all citizens; and

WHEREAS, the heavy reliance on property taxes by schools and local governments threatens their capacity to function; and

WHEREAS, the proposals presently before the Legislature do not adequately address the personal property tax problem.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature should take leadership in resolving this tax crisis.

2. That the Legislature should consider meeting in special session to revise the personal property tax system with the possibility of making adjustments to the entire state tax system.

Laid over.

LEGISLATIVE RESOLUTION 2. Introduced by Conway, 17th District.

WHEREAS, United Flight 232 crashed near Sioux City, Iowa, on July 19, 1989; and

WHEREAS, one hundred twelve people were killed and one hundred eighty-four people survived the crash; and

WHEREAS, residents of the three-state Siouxland community responded to the emergency and donated their time, money, houses, clothing, emotional support, and other necessities of life to the survivors and their families and to the families of those who lost loved ones in the crash; and

WHEREAS, for its response to this summer's crash, Sioux City, Iowa was the recipient of the first Midland Community Spirit Award as well as other national attention for this response; and

WHEREAS, the spirit of compassion, generosity, and support shown by the residents of the Siouxland community should be applauded and used as an example of the goodness and compassion that can be found in Nebraska, South Dakota, and Iowa and nationwide.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature commends the residents of the three-state Siouxland area for their outstanding contributions during the aftermath of the crash.

2. That a copy of this resolution be sent to the mayors of South Sioux City, Nebraska, Dakota City, Nebraska, Sioux City, Iowa, and North Sioux City, South Dakota and shared with all known volunteers, participants, and residents of the Siouxland community.

Laid over.

LEGISLATIVE RESOLUTION 3. Introduced by Conway, 17th District; Baack, 47th District.

WHEREAS, Nebraska is dedicated to economic development and expansion of commerce; and

WHEREAS, the nation's airways and air terminals are seriously congested and new ground facilities are needed to relieve the congestion; and

WHEREAS, the federal government is considering the construction of a small number of air terminals located in rural areas, to be known as wayports, which would handle the majority of passenger and freight transfers as a solution to the congestion; and

WHEREAS, the location of a wayport in Nebraska could result in increased development of the manufacturing and service industries in the state; and

WHEREAS, other states have been actively seeking the location of a wayport in their own state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Department of Aeronautics and Department of Economic Development work together to study, support, and advocate the location of a wayport to the benefit of Nebraska and present any findings to the Transportation Committee of the Legislature.

2. That a copy of this resolution be sent to Governor Kay Orr, the Director of Aeronautics, and the Director of Economic Development.

Laid over.

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 8. Introduced by Schmit, 23rd District.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 12-302, 12-506, 12-520, 77-202.01, 77-202.02, 77-202.04, 77-202.05, and 77-202.06, Reissue Revised Statutes of Nebraska, 1943, section 77-202, Revised Statutes Supplement, 1988, and section 77-202.03, Revised Statutes Supplement, 1989; to eliminate certain exemptions from real property taxes; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 9. Introduced by Schmit, 23rd District.

A BILL FOR AN ACT relating to property taxation; to amend sections 10-612, 15-318, 15-319, 15-733, 16-702, 21-17,126, 23-343, 23-343.01, 23-343.15, 31-411.02, 31-447, 35-505, 35-506, 35-507, 35-514, 35-531, 35-535, 39-1518, 44-2414, 46-542, 46-543, 46-544, 77-202.01, 77-202.02, 77-202.04, 77-202.05, 77-202.06, 77-381, 77-415, 77-519, 77-602, 77-604, 77-1242.02, 77-1342, 77-1506.01, 77-1613, 77-1616, and 79-481, Reissue Revised Statutes of Nebraska, 1943, sections 77-202, 77-430, 77-505, 77-506, 77-507.01, 77-508, 77-509, 77-510, 77-802, 77-1240.01, 77-1301, 77-1318, 77-1503.01, and 77-1507, Revised Statutes Supplement, 1988, and sections 77-202.03, 77-1504, and 77-1506.02, Revised Statutes Supplement, 1989; to exempt personal property other than motor vehicles from taxation; to harmonize provisions; to eliminate provisions relating to levy, assessment, adjustment, and collection of taxes on personal property; to eliminate certain exemptions; to eliminate provisions providing for taxation of air transportation carriers; to provide an operative date; and to repeal the original sections, and also sections 15-320, 77-205, 77-206, 77-406, 77-1208, 77-1210, 77-1211, 77-1212, 77-1213, 77-1214, 77-1215, 77-1216, 77-1229.01, 77-1232, 77-1233, 77-1234, 77-1236, 77-1244, 77-1245, 77-1246, 77-1247, 77-1248, 77-1249, 77-1249.01, and 77-1250, Reissue Revised Statutes of Nebraska, 1943, and sections 77-202.46, 77-409, 77-410, 77-412, 77-412.01, 77-1201, 77-1202, 77-1209, 77-1209.02, 77-1209.03, 77-1209.04, 77-1209.05, 77-1219, and 77-1229, Revised Statutes Supplement, 1988.

ADJOURNMENT

At 11:46 a.m., on a motion by Mr. Barrett, the Legislature adjourned until 9:00 a.m., Thursday, November, 9, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

SECOND DAY - NOVEMBER 9, 1989**LEGISLATIVE JOURNAL****NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION****SECOND DAY**

Legislative Chamber, Lincoln, Nebraska
Thursday, November 9, 1989

Pursuant to adjournment, the Legislature met at 9:03 a.m., President Nichol presiding.

PRAYER

The prayer was offered by Senator Weihing.

ROLL CALL

The roll was called and all members were present except Messrs. Ashford, Hartnett, Kristensen, Moore, Morrissey, and Wesely who were excused; and Mr. Abboud and Mrs. Pirsch who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the First Day was approved.

RESOLUTIONS

LEGISLATIVE RESOLUTION 1. Read. Considered.

SPEAKER BARRETT PRESIDING

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 9 nays, and 15 not voting.

Passed over.

LEGISLATIVE RESOLUTION 2. Read. Considered.

Mr. Hefner asked unanimous consent to have his name added as co-introducer to LR 2. No objections. So ordered.

LR 2 was adopted with 37 ayes, 0 nays, and 12 not voting.

LEGISLATIVE RESOLUTION 3. Read. Considered.

LR 3 was adopted with 31 ayes, 0 nays, and 18 not voting.

UNANIMOUS CONSENT - Member Excused

Mr. Baack asked unanimous consent to be excused. No objections. So ordered.

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of legislative bills 1 through 9, Governor appointments, and Secretary of State appointment.

LB	Committee
1	Revenue
2	Revenue
3	General File
4	Revenue
5	Revenue
6	Revenue
7	Revenue
8	Revenue
9	Revenue

Business and Labor

Commission of Industrial Relations, Frankie Dawson

Education

Coordinating Commission for Postsecondary Education,
James McClurg
Safety Center Advisory Council, Fred Zwonechek
Safety Center Advisory Council, Rollin Schnieder
Safety Center Advisory Council, Larry Morris
Safety Center Advisory Council, John Siefkes
Safety Center Advisory Council, Ralph Hild
Safety Center Advisory Council, Duane Schmidt

Safety Center Advisory Council, Clayton Andrews
Safety Center Advisory Council, Betty Stuckey
Safety Center Advisory Council, Thomas Gorman

Judiciary

Board of Parole, Carlos Alvarez

General Affairs

State Electrical Board, Emmett Smith
State Electrical Board, Joseph Pinhero
Liquor Control Commission, William Skarda

Government, Military and Veterans Affairs

Dept. of Adm. Services, Director, Deborah Thomas
Dept. of Personnel, Director, Jerry Sellentin
State Personnel Board, Christine Harris
Political Accountability & Disclosure Commission, J. L. Spray

Health and Human Services

Board of Health, Arthur Weaver
Child Abuse Prevention Fund Board, Jack Hallstrom
Child Abuse Prevention Fund Board, Marianna Vargas
Child Abuse Prevention Fund Board, Sarah Crawford

Natural Resources

Environmental Control Council, Barb B. Batie
Environmental Control Council, Vernon Pearson
Environmental Control Council, Mark Whitehead
Environmental Control Council, Dwayne Smith
Environmental Control Council, Darlene Kiefer
Environmental Control Council, Elwin Larson
NE Gasohol Committee, Opal Jensen
NE Gasohol Committee/Ethanol Authority & Development Board,
James Kral
NE Gasohol Committee/Ethanol Authority & Development Board,
Howard Buffett
NE Gasohol Committee/Ethanol Authority & Development Board,
Richard Lichti
Environmental Control Council, Duane Liebsack

Nebraska Retirement Systems

Public Employees Retirement Board, Karen Brasec

Revenue

Property Assessment & Taxation Commission, James Brooks
Property Assessment & Taxation Commission, Irene Hunsberger
Property Assessment & Taxation Commission, Robert Root
Property Assessment & Taxation Commission, George Tesar, Jr.
Property Assessment & Taxation Commission, Alice Ryschon
Property Assessment & Taxation Commission, Robert Morrison
Property Assessment & Taxation Commission, Sylvia Wagner
Property Assessment & Taxation Commission, Charles Strasburg
Property Assessment & Taxation Commission, John Anderson
NE Agricultural Land Valuation Advisory Board, Bruce Johnson

Transportation

Motor Vehicle Industry Licensing Board, Dana Trowbridge
State Highway Commission, Soren Jensen
State Highway Commission, George Miles
State Highway Commission, Donna Wanitschke
State Highway Commission, James Keenan

Education

NE Safety Center Advisory Council, Carol Cope
NE Safety Center Advisory Council, Pennie Davis
NE Safety Center Advisory Council, Laura Acklie
Board of Educational Lands & Funds, Jane Keller

(Signed) Bernice Labedz, Chairperson
Legislative Council
Executive Board

MOTION - Rerefer Bills to General File

Mr. Schmit moved to rerefer LBs 1, 2, 4, 5, 6, 7, 8, and 9 to General File, pursuant to Rule 6, Section 2.

Mr. Chizek asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Schmit withdrew his pending motion to rerefer bills.

MOTION - Suspend Rules

Mrs. Labedz moved to suspend the rules, Rule 9, Section 3, to permit committees to conduct confirmation hearings on gubernatorial appointments more than five calendar days following the referral of such appointments by the Reference Committee.

The Labeledz motion prevailed with 30 ayes, 4 nays, 7 present and not voting, and 8 excused and not voting.

NOTICE OF COMMITTEE HEARINGS
Judiciary

Governor Appointments Thursday, November 16, 1989 Upon
Adjournment

Board of Parole
Carlos Alvarez

(Signed) Jerry Chizek, Chairperson

Education

Governor Appointments Wednesday, November 15, 1989 1:15 p.m.

Safety Center Advisory Council

Fred E. Zwonechek

Betty J. Stuckey

John J. Siefkes

Rollin Schnieder

Duane Schmidt

Larry Morris

Ralph Hild

Thomas J. Gorman

Pennie Z. Davis

Carol I. Cope

Clayton L. Andrews

Laura Acklie, M.D.

Coordinating Commission for Postsecondary Education

Dr. James McClurg

Board of Educational Lands and Funds

Jane M. Keller

(Signed) Ron Withem, Chairperson

Revenue

LB 1	Friday, November 10, 1989	9:00 a.m.
LB 2	Friday, November 10, 1989	9:00 a.m.
LB 4	Friday, November 10, 1989	9:00 a.m.
LB 5	Friday, November 10, 1989	9:00 a.m.

LB 6	Friday, November 10, 1989	9:00 a.m.
LB 7	Friday, November 10, 1989	9:00 a.m.
LB 8	Friday, November 10, 1989	9:00 a.m.
LB 9	Friday, November 10, 1989	9:00 a.m.

Governor Appointments Thursday, November 16, 1989 10:00 a.m.

Property Assessment & Taxation Commission

Irene Hunsberger

George E. Tesar, Jr.

Alice M. Ryschon

Charles Strasburg

Robert R. Root

James E. Brooks

John R. Anderson

Sylvia B. Wagner

Robert L. Morrison

Nebraska Agricultural Land Valuation Advisory Board

Bruce B. Johnson

(Signed) Tim Hall, Chairperson

Business and Labor

Governor Appointment Thursday, November 16, 1989 10:30 a.m.

Commission of Industrial Relations

Frankie Dawson

(Signed) George Coordsen, Chairperson

Natural Resources

Governor Appointments Tuesday, November 14, 1989 8:00 a.m.

Environmental Control Council

Dwayne Smith

Vernon H. Pearson

Mark A. Whitehead

Duane E. Liebsack

Darlene Kiefer

NE Gasohol Committee & Ethanol Authority & Development Bd

Richard Lichti

Governor Appointments Thursday, November 16, 1989 8:00 a.m.
Environmental Control Council
Elwin M. Larson
Barb Bierman Batie

NE Gasohol Committee & Ethanol Authority & Development Bd
Howard G. Buffett
James Kral

NE Gasohol Committee
Opal Jensen

(Signed) Loran Schmit, Chairperson

Government, Military and Veterans Affairs

Governor Appointments Thursday, November 16, 1989 1:30 p.m.
Department of Administrative Services
Deborah L. Thomas, Director

Department of Personnel
Jerry L. Sellentin, Director

State Personnel Board
Christine M. Harris

Secretary of State Appointment
Nebraska Accountability & Disclosure Commission
J. L. Spray

(Signed) Dennis Baack, Chairperson

General Affairs

Governor Appointments Monday, November 13, 1989 5:30 p.m.
State Electrical Board
Joseph E. Pinhero
Emmett Smith

Liquor Control Commission
William R. Skarda

(Signed) Jacklyn Smith, Chairperson

Transportation

Governor Appointments Friday, November 17, 1989 8:30 a.m.

State Highway Commission

Soren S. Jensen

James D. Keenan

George A. Miles

Donna M. Wanitschke

Motor Vehicle Industry Licensing Board

Dana Trowbridge

(Signed) Howard Lamb, Chairperson

MOTION - Adjournment

Mr. Weihing moved to adjourn until 5:00 p.m., Monday, November 13, 1989. The motion prevailed with 25 ayes, 1 nay, and 23 not voting, and at 11:02 a.m., the Legislature adjourned until 5:00 p.m., Monday, November 13, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

THIRD DAY - NOVEMBER 13, 1989**LEGISLATIVE JOURNAL****NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION****THIRD DAY**

Legislative Chamber, Lincoln, Nebraska
Monday, November 13, 1989

Pursuant to adjournment, the Legislature met at 5:02 p.m., President Nichol presiding.

PRAYER

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

ROLL CALL

The roll was called and all members were present except Messrs. Ashford, Chizek, Conway, Hannibal, Hartnett, R. Johnson, Korshoj, Lindsay, Lynch, Wehrbein, Mmes. Labedz, and Pirsch who were excused.

CORRECTIONS FOR THE JOURNAL

The Journal for the Second Day was approved.

ATTORNEY GENERAL'S OPINIONSOpinion No. 89067

DATE: November 9, 1989

SUBJECT: Line item vetoes of appropriations for the University of Nebraska, and the effect of overrides by the Legislature.

REQUESTED BY: Senator Dennis Baack,
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

LB 813, the main appropriations bill for state government during the 1989 legislative session, was passed by the Legislature on May 19, 1989. Section 53 of LB 813 dealt with appropriations for the University of Nebraska, and language at the beginning of that section stated:

There is hereby appropriated to the Board of Regents of the University of Nebraska for expenditures and distribution to the campuses by the University of Nebraska Central Administration the following sums of money.

	FY 1989-90	FY 1990-91
General Fund	205,525,325	208,880,915
Program Total	205,525,325	208,880,915

Immediately following this appropriations language in §53, there was a heading "For Informational Purposes Only," followed by a lengthy discussion of the various programs which the Legislature intended to fund within the overall University appropriation. That discussion listed itemized amounts for various specific programs including \$386,000 in Fiscal Year 1989-90 and \$397,580 in Fiscal Year 1990-91 for operation of a family practice residency program involving the University Medical Center and the Lincoln Medical Education Foundation.

On May 23, 1989, Governor Orr made a number of line item vetoes in connection with LB 813. With respect to §53, she lowered the total funding for the University of Nebraska as follows:

	FY 1989-90	FY 1990-91
General Fund	203,060,821	206,165,800
Program Total	203,060,821	206,165,800

In the portion of §53 labeled "For Informational Purposes Only," she also made a series of line item vetoes indicating the various programs which were the subject of her appropriations reductions. The total of those specific cuts equaled the total amount removed from the main University appropriation. Governor Orr vetoed the entire amount set aside for the family practice residency program.

On May 23, 1989, the Legislature voted, by the necessary constitutional majority, to override the Governor's veto of the monies allocated to the family practice residency program. However, that override was made in the portion of §53 labeled "For Informational Purposes Only." The main total appropriation figure established for

the University as a result of the Governor's earlier line item veto was left unchanged.

You now ask two questions. First, what was the effect of the Legislature's veto override; that is, were the additional amounts for the family practice residency program actually added back into the main appropriation? Second, if the Governor can line item veto specific University programs within the University appropriation, can the Legislature override those specific program vetoes, or must it restore the entire amount of the reduction for the University? Our conclusions are set out below.

In Board of Regents v. Exon, 199 Neb. 146, 149, 256 N.W.2d 330, 333 (1977), our state supreme court stated:

The general appropriation bill adopted by the Legislature in 1975, as amended by LB 972 in 1976, and the general appropriation bill adopted in 1976, LB 690, contained numerous statements directing the Board of Regents or employees of the University to take certain actions. The trial court held that the statements in these bills which do not constitute an appropriation of funds were advisory only and not mandatory and that the Legislature was without authority to direct employees of the University. Although the defendants did not challenge this finding in their assignments of error, we have considered it and agree that it is correct.

The Legislature cannot use an appropriation bill to usurp the powers or duties of the Board of Regents and to give directions to the employees of the University. The general government of the University must remain vested in the Board of Regents. In prescribing the powers and duties of the Regents a legislative act must not be so detailed and specific in nature as to eliminate all discretion and authority on the part of the Regents as to how a duty shall be performed.

We assume that this case provides the reason why §53 of LB 813 contains a general, total appropriation to the University followed by specific program allocations labeled "For Informational Purposes Only." In any event, we believe that, under the language of LB 813, the actual operative item of appropriation to the University is the total amount set out prior to the heading "For Informational Purposes Only." The specific program figures set out subsequently are, as their heading implies, for informational purposes, and represent a suggestion by the Legislature to the Board of Regents as to how the Legislature believes the total appropriation should be spent. It logically follows that an override of the Governor's line item veto with respect to the University must involve the operative total appropriation figure for that entity. We believe that the override here,

where the total figure was left unchanged after the veto, simply constitutes the Legislature's suggestion to the Board of Regents that the family practice residency program in some way should be funded. As you have suggested, an appropriation of actual dollars for that purpose would therefore require a deficit appropriation.

Your second question involves how the Legislature must deal with line item vetoes by the Governor of specific programs involving the University of Nebraska.

Article IV, Section 15 of our Nebraska Constitution was amended in 1976 to provide for line item overrides of the Governor's line item vetoes of appropriations bills. See, LB 17, 84th Nebraska Legislature, First Session, 1975; Introducer's Statement of Purpose, LB 17, 84th Nebraska Legislature, First Session, 1975. Since the Legislature may now override vetoes on an item-by-item basis, the first issue in the context of the University appropriation is what is an "item" with respect to §53 of LB 813. As discussed above, we believe that the actual operative appropriation "item" in that section is the total lump sum appropriation made to the University. The various subsequent funding figures are, of necessity, simply suggestions to the Board of Regents and not "items" within the contemplation of Article IV, Section 15 of our state constitution. Therefore, the Legislature's line item override authority pertains to the total University appropriation set out in the initial portion of §53.

The total reduction made by the Governor in the University's main appropriation involves several suggested allocations of funds within the University budget in addition to the family practice residency program which is the focus of your concern. Since you desired to fund only the family practice program, or a portion of the Governor's overall reduction, the next question presented by your opinion request is whether the total appropriation "item" for the University can be partially restored through the override process. We believe the answer to that question is no; a legislative override of the Governor's veto of the total appropriation "item" for the University can only be used to restore the total amount of the reduction by the Governor.

We have been able to find little law in this area. However, it is clear that the words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning. State ex rel. Douglas v. Beermann, 216 Neb. 849 347 N.W.2d 297 (1984). The constitutional provision at issue, Article IV, Section 15, provides that the Legislature may "repass" an item or items vetoed by the Governor in an appropriation measure by a three-fifths approval of the members elected. "Repass" is generally defined as "to pass back or to pass again." Webster's New World Dictionary, Second College Edition (1982). Consequently, we believe

that the Legislature may, through the line item override, "repass" or restore the total original amount of the "item" vetoed by the Governor. We do not believe that the Legislature may partially restore an item through the override process. This position is consistent with that taken in our Opinion No. 120 dated May 20, 1983, in which we indicated that the Legislature could not restore a portion of an appropriation program through the override process.

While the Legislature cannot partially restore the amount of an appropriations item through the override process, it is also clear that the Legislature has full control over the passage of bills, and may amend a bill at any time permitted by its rules during the bill's progress through the Legislature. State ex rel. Martin v. Ryan, 92 Neb. 636, 139 N.W. 235 (1912). In addition, we have previously indicated that a bill returned to the Legislature by the Governor without his or her signature is again before that body and may be reconsidered. Report of the Attorney General 1969-1970, Opinion No. 74, page 111. Therefore, it appears to us that a bill could be amended subsequent to its return by the Governor so as to include a partial restoration of funds vetoed by the Executive if the Legislature's rules so provide. Such an amended bill would, of course, have to again be presented to the Governor for his or her consideration.

In sum, we believe that the line item override for the family residency program in LB 813 did not bring about a restoration of those funds to the University budget, but rather simply indicated the Legislature's intent to the Board of Regents. We also believe that the Legislature may not partially restore funds within an item vetoed by the Governor. The Legislature must restore the entire amount of the specific item through the line item override process.

Respectfully submitted,

ROBERT M. SPIRE

Attorney General

(Signed) Dale A. Comer

Assistant Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 89068

DATE: November 9, 1989

SUBJECT: Constitutionality of Legislation Exempting
Railroad Operating Property From Personal
Property Tax

REQUESTED BY: Senator James D. McFarland
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to a draft copy of a bill you indicate "apparently" will be introduced in the Special Session to begin November 8, 1989, which would amend Neb.Rev.Stat. §77-202 (Cum.Supp. 1988) to include a subsection providing that "... {a}ll operating property of any railroad company or railroad car company shall be exempt from the personal property tax." Your question concerns whether the adoption of legislation of this nature would, in your words, "... violate the Uniformity of Taxation Clause of the Nebraska Constitution (Article VIII, Section 1) or the Equal Protection Clause of the 14th Amendment to the United States Constitution, or any other state or federal constitutional provision."

In Attorney General Opinion No. 89065, November 2, 1989, we addressed at length a similar question as to the constitutionality of the establishment of a legislative classification exempting from personal property tax "rolling stock owned or leased by railroads and used in railroad transportation." In general, the matters addressed in this opinion relate directly to your request to the extent that your proposed legislation seeks to deal with the constitutionality (under Article VIII, Sections 1 and 2 of the Nebraska Constitution, or the Equal Protection Clause of the United States Constitution) of the separate classification and taxation of rail transportation personal property pursuant to Nebraska law. In essence, the difference between your request and our prior opinion focuses on whether an exemption for "all operating property of any railroad or railroad car company," as opposed to an exemption for "railroad rolling stock," raises any constitutional issues in addition to those addressed in our prior opinion.

Apart from concerns as to the manner in which the draft bill is worded, the primary difficulty which arises in regard to your proposed bill is the question of whether such legislation could survive scrutiny under either the state constitutional prohibition against unreasonable or arbitrary classification (Neb. Const., Art. III, §18), or the protection against classifications which do not satisfy the rational basis criteria under the Equal Protection Clause of the 14th

Amendment to the United States Constitution. If the Legislature were to enact legislation exempting "all operating property of any railroad company or railroad car company" from personal property tax, the general nature of such language would result in the exemption of various types of personal property of railroads which, if owned by other individuals or entities, would remain within the class of taxable tangible property. We believe a serious question exists as to whether such an approach would satisfy constitutional requirements regarding the reasonableness and rationality of such classification. In any event, it appears that the draft bill you propose is outside the scope of the subjects presently contained in the Proclamation, and, accordingly, would not constitute valid legislative business to be acted upon during the current special session.

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

7-272-2

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 89069

DATE: November 9, 1989

SUBJECT: Scope of Governor's Special Session Call

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether the Governor's Proclamation calling the Legislature into special session is unduly "narrow," and, consequently, restricts the Legislature's ability to exercise its legislative function, in contravention of the separation of powers requirement in Article II, Section 1 of the Nebraska Constitution. In particular, your question focuses solely on one of the five subjects stated in the Proclamation, which calls the Legislature into special session "{t}o enact legislation to extend to railroad

rolling stock the same treatment already granted by section 306(1)(d) of the Federal 4-R Act and federal court interpretations of the Act; .

Article IV, Section 8 of the Nebraska Constitution, provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

The last portion of this constitutional provision places an express limitation on the power of the Legislature to act during a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing the nature of this limitation, stated:

It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q. R.R. Co. v. Wolfe, 61 Neb. 502, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

The court in Arrow Club, *supra*, quoting at length from the Pennsylvania Supreme Court's decision in Commonwealth ex rel. Schnader v. Liveright, 308 Pa. 35, 161 A. 697 (1932), continued as follows:

"This constitutional provision contemplates that there shall first exist in the executive mind a definite conception of the public emergency which demands an extraordinary session. His mental attitude or intention is expressed in his proclamation, the purpose of which is to inform the members of the legislature of subjects for legislation, and to advise the public generally that objections may be presented if desired. It is not only a guide or chart with respect to which the legislature may act, but also a check restricting its actions so that rights may not be affected without notice. The proclamation may contain many or few subjects according to the governor's conception of the public need. While the subjects may be stated broadly or in general terms, the special business, as related to the general subject on which legislation is desired, should be designated by imposing qualifying matter to reduce or restrict. Although the subjects should be sufficient to evoke intelligent and responsive action from the legislature, it is not necessary that they include all the methods of accomplishment. The guiding principle in sustaining legislation of a special session is that it be germane

to, or within, the apparent scope of the subjects which have been designated as proper fields for legislation. In construing a call the words of any portion thereof must be interpreted not only as commonly and universally understood, but also as applicable to the subject intended to be affected by legislation.

While the legislature must confine itself to the matters submitted, it need not follow the views of the governor or legislate in any particular way. Within the special business or designated subjects submitted, the legislature cannot be restricted or dictated to by the governor. It is a free agent, and the governor, under the guise of definition, cannot direct or control its action."

Id. at 689-90, 131 N.W.2d at 137. (Emphasis added).

In a previous opinion, we specifically noted "... the task of formulating and enacting legislation is constitutionally committed to the Legislature, and the Governor's authority to establish the agenda for a special session is an exception to the normal separation of powers provided for under Article II, Section 1, of the Nebraska Constitution." Attorney General Opinion No. 86078, Nov. 14, 1986. Accordingly, the Governor's authority to outline the subjects for legislative consideration at a special session must be reasonably interpreted in a manner consistent with the separation of powers requirement. See Empire Savings, Building & Loan Association v. Otero Savings & Loan Association, 640 P.2d 1151 (Colo. 1982); 1 Sutherland Statutory Construction §5.08 (4th ed. C.D.Sands 1985).

With regard to your specific question, we do not believe the Governor's Proclamation, while somewhat narrow in scope, is stated in such a manner as to unconstitutionally infringe on the Legislature's power to enact legislation, in violation of Article II, Section 1. The extraordinary occasion which has resulted in the Governor's call bringing the Legislature into special session is the concern which has arisen as to the stability and certainty of Nebraska's current property tax system by virtue of various federal court actions brought under the 4-R Act, as well as the Nebraska Supreme Court decisions in Northern Natural Gas Co. v. State Board of Equalization and Assessment, 232 Neb. 806, 443 N.W.2d 249 (1989) and Trailblazer Pipeline Co. v. State Board of Equalization and Assessment, 232 Neb. 823, 442 N.W.2d 386 (1989). The Governor's Proclamation outlines several subject areas for legislative consideration in response to this situation. In our view, the subjects listed in the Proclamation, viewed as a whole and in the context of the extraordinary occasion giving rise to the calling of the special session, do not appear to represent any unconstitutional infringement upon the power of the Legislature, in contravention of Article II, Section 1. The Legislature is free to consider and act upon legislation within the scope of any

or all of the subjects outlined, and, if it chooses, may decline to enact legislation relating to any of the subjects enumerated. Under the circumstances, we cannot say that the Proclamation necessarily restricts the Legislature's power to act in a manner which violates the separation of powers requirement.

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

7-273-2

cc: Patrick J. O'Donnell
Clerk of the Legislature

Opinion No. 89070

DATE: November 9, 1989

SUBJECT: Limitations on property tax refunds, LB2

REQUESTED BY: State Senator James D. McFarland,
District No. 28.

WRITTEN BY: Robert M. Spire, Attorney General
David Edward Cygan, Assistant Attorney General

We are writing in response to your request for an opinion regarding the constitutional implications of a bill placing limitations on property tax refunds. Specifically you have requested us to determine whether such a bill would violate the Uniformity of Taxation clause of the Nebraska Constitution (Article VIII, Section 1) or the Equal Protection Clause of the 14th Amendment of the United States Constitution, or any other state or federal constitutional provision.

The current proposed legislation, LB2, would seek to alter the state property tax statutes by:

- 1) Increasing the penalty for unpaid taxes to 50% of the unpaid taxes.
- 2) Prohibiting refunds or non-payment of the property taxes during the pendency of an appeal.
- 3) Defining as illegal taxes those which:

- a) are beyond the jurisdiction of the levying body;
 - b) are in excess of the constitutional or statutory levy limit;
 - c) are levied for an unauthorized purpose;
 - d) are the result of fraudulent conduct by a taxing official, or;
 - e) are exempt from taxation pursuant to subdivision (1)(a) of section 77-202 (the enumerated exemptions)
- 4) Specifically excluding from the definition of illegal those taxes invalidated for constitutional or equalization reasons.
 - 5) Limiting refunds for taxes invalidated for constitutional or equalization reasons to only those taxpayers who have timely and successfully prosecuted a claim for equalization relief.

Your request specifically indicates a concern with the last point above, whether the Legislature can limit refunds to those individuals who have not timely prosecuted their claim for equalization relief in court. However, it would appear that this bill mirrors and may eventually codify what the current Nebraska Supreme Court position is on this issue.

The Nebraska Supreme Court has addressed this issue in Beshore v. Sidwell, 222 Neb. 441, 384 N.W.2d 290 (1986). In Beshore, the court addressed a taxpayer who sought a refund following the court's decision of Kearney Convention Center v. Board of Equal., 216 Neb. 292, 344 N.W.2d 620 (1984) which, similar to Northern Natural Gas Co. v. State Board of Equal., 232 Neb. 806, ____ N.W.2d ____ (1989) granted equalization relief in the form of reducing the valuation of the complaining taxpayer to the value of other property in the same class. Subsequent to the Court's decision in Kearney Convention Center, the Nebraska Unicameral passed an amendment to Neb.Rev.Stat. §77-1735 which read in relevant part:

If a person who claims a tax or any part thereof to be invalid for any reason other than the valuation of the property shall have paid the same to the treasurer or other proper authority in all respects as though the claim was legal and valid, he or she may, at any time within thirty days after such payment, demand the same in writing from the county treasurer to whom paid. If the same shall not be refunded within ninety days thereafter, he or she may sue such county treasurer for the amount demanded.

Neb.Rev.Stat. §77-1735 (Cum. Supp. 1984). The legislature afforded taxpayers seeking a refund this remedy that needed to be initiated within thirty days after the payment of the disputed tax. In Beshore the taxpayer neglected to address their grievances to the county treasurer within the mandated thirty days and instead marched straight into district court. In directing the review to be first before

the county board of equalization, the Nebraska Supreme Court noted that the tax on an over-valuation was not a void tax for which refunds would be the apt remedy. The court quite clearly stated that the tax was a voidable tax, which required action on behalf of the taxpayer to first apply for equalization relief before the county board. This subtle distinction between "void" and "voidable" taxes places the burden upon the taxpayer with a "voidable" tax complaint to first go forward and seek relief within the established channels for equalization. The Nebraska Supreme court held that the district court was without jurisdiction to grant equalization relief. The Court reasoned that to permit such jurisdiction would constitute a collateral attack upon a voidable tax. Collateral attack is an attempt to avoid, defeat, or evade a judicial proceeding in an incidental proceeding with the intent to defeat it. May v. Casker, 188 Okl. 448, 110 P.2d. 287 (1940). The Court further stated:

Appellants (taxpayers) argue to us that the legislature would not have amended Neb.Rev.Stat. §77-1735 unless it believed that such amendment was necessary to preclude claims for refunds being made. Such argument must be rejected. As we have already said, even before Neb.Rev.Stat. §77-1735 was amended to specifically preclude an action such as the one brought here, such an action could not be maintained. The amendment to Neb.Rev.Stat. §77-1735 merely made clear by statute what was already the law. The fact that the Legislature may have believed that such amendment is necessary does not change the law nor permit such action to be brought directly in the district court.

Beshore v. Sidwell, 222 Neb. 441, 445, 384 N.W.2d 290, 294 (1986)(citations and parenthetical supplied).

Likewise, it would appear that the proposed bill is again codifying the current law of collateral attack. Those taxpayers that have failed to file appeals from locally assessed taxes within the forty-five days after adjournment of the county board of equalization are barred from bringing refund claims for prior years. Centrally assessed taxpayers are afforded ten days under the Neb.Rev.Stat. §77-510 to perfect a valuation appeal to the Supreme Court. For 1989, the State Board of Equalization met on August 11. Therefore any appeal after August 21, 1989 is barred both by the proposed bill and the doctrine of collateral attack.

The short response then to your question regarding the constitutionality of such a limitation in light of the foregoing is that we cannot foresee any constitutional problem with the limitation for the reason that it mirrors current case law.

Respectfully submitted,

Robert M. Spire
Attorney General
(Signed) David Edward Cygan
Assistant Attorney General

Opinion No. 89071

DATE: November 13, 1989

SUBJECT: Constitutionality of Legislation Amending the
Definition of Real Property in Neb.Rev.Stat.
§77-103 (Reissue 1986)

REQUESTED BY: Senator James D. McFarland
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the constitutionality of legislation to be introduced at the special session which would amend the definition of "real property" currently contained in Neb.Rev.Stat. §77-103 (Reissue 1986). The draft bill which you have submitted for our review would add a subsection to §77-103 which would include within the definition of "real property" the following: "Buried pipelines, buried and overhead cables, transmission towers and lines, railroad tracks, fixed signals, and rights-of-way, and other similar property attached to real estate," Your question concerns whether the enactment of such legislation would violate the requirement of uniform taxation in Article VIII, Section 1, of the Nebraska Constitution, or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Neb.Rev.Stat. §77-103 (Reissue 1986) provides:

The terms real property, real estate and lands shall include city and village lots and all other lands, and all buildings, fixtures, improvements, cabin trailers or mobile homes which shall have been permanently attached to the real estate upon which they are situated, mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests and production payments with respect to oil or gas leases, units of beneficial interest in trusts, the corpus of which includes any of the foregoing, and privileges pertaining thereto.

Personal property is defined to include all property other than real property and franchises. Neb.Rev.Stat. §77-104 (Reissue 1986).

Northern Natural Gas Co. v. State Board of Equalization and Assessment, 232 Neb. 806, 443 N.W.2d 249 (1989) [{" Northern"}], involved an appeal from a request presented by Northern to the State Board of Equalization and Assessment to have the personal property component of its unit value equalized with railroads and car companies in Nebraska, as well as a determination that its pipelines were personal property. In assessing Northern's contentions, the court, citing the decision in State ex rel. Meyer v. Peters, 191 Neb. 330, 215 N.W.2d 520 (1974), noted the definition of real property currently contained in Neb.Rev.Stat. §77-103 (Reissue 1986) largely codified the common-law rules relating to fixtures. Applying the common-law factors for determining whether an item constitutes a fixture, the court determined that Northern's pipeline property constituted personal property. Id. at 822, 443 N.W.2d at 259.

The question which arises in considering your proposed amendment to the definition of real property for tax purposes is whether the Legislature may, consistent with constitutional requirements, adopt a statutory definition of real property which differs from adherence to the common-law standards which the court has stated are presently contained in §77-103. In this regard, [{"i}t is competent for the Legislature to classify for purposes of legislation, if the classification rests on some reason of public policy, some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified." Stahmer v. State, 192 Neb. 63, 68, 218 N.W.2d 893, 896 (1974). Primarily, the standard to be employed in assessing the validity of any action to be undertaken by the Legislature in classifying and defining real property for tax purposes is one of reasonableness.

With regard to the determination of whether particular kinds of property of public service corporations are to be regarded as real or personal for tax purposes, the following discussion is contained in 71 Am.Jur.2d State and Local Taxation §439 (1973):

The question is, of course, one within the discretion of the legislature, and if the legislative intention is deducible from the controlling statutes, it must be respected. Thus, in numerous instances the problem resolves itself into a determination of whether or not the particular kind of property under consideration may be regarded as "land," "real estate," "lots," etc., within the meaning of applicable statutes. Under some statutes, broad terms of the kind mentioned are expressly defined as including structures or improvements attached to the soil, and where this is the case, a somewhat more liberal interpretation of the kinds of property owned by public service corporations which may be regarded as

realty for tax purposes is usually adopted. Where the applicable statutes contain no clear indication of the intention of the legislature with respect to the question under consideration, many courts fall back upon general principles relating to the law of fixtures, making the question whether a particular form of property owned by a public utility is to be regarded as real estate for tax purposes depend upon whether or not it may be regarded as a fixture.

(Footnotes omitted).

Consistent with these general principles, states other than Nebraska have adopted statutory definitions of real property or real estate for tax purposes that include types of property which, under the common-law of fixtures, would likely be considered to be personalty. See, e.g., N.Y. Real Property Tax Law §102, Subd. 12 (McKinney 1984 and Supp. 1989); Iowa Code Ann. §427 A.1, Subd. 1 (West Supp. 1989); N.D. Cent. Code §57-02-04, Subd. 3 (1983). In particular, the New York statutory definition of real property cited above contains a list similar in nature to that contained in L.B. 1, which is before the Legislature for consideration in the current special session. In sustaining the constitutionality of this definition, the New York Supreme Court stated: "The Legislature has the power to classify and define what property is taxable as real property, and for some time prior to the enactment of the statute in question the Tax Law has provided that certain property, which under the common law is personal property, is subject to tax as real property." Beagell v. Douglas, 2 Misc.2d 361, 363, 157 N.Y.S.2d 461, 463 (N.Y.Sup.Ct. 1955). See also Signal Oil and Gas Co. v. Williams County, 206 N.W.2d 75 (N.D. 1973) (holding provision of property tax law defining as "real property" machinery and equipment used in refining oil and gas did not create unreasonable classification in violation of State Constitution or the Equal Protection Clause of the Federal Constitution); Heritage Cablevision v. Marion County Board of Supervisors, 436 N.W.2d 37 (Iowa 1989) (rejecting facial constitutional challenge to Iowa statute exempting most, but not all, tangible personal property by classifying certain types of property as real property).

In spite of this precedent from other jurisdictions upholding legislative classifications and definitions which alter the common-law of fixtures in determining the status of property as real or personal, it is necessary to give due consideration to the potential impact of the Nebraska Supreme Court decision in Moeller, McPherrin and Judd v. Smith, 127 Neb. 424, 255 N.W. 551 (1934) {"Moeller"}. Moeller involved a constitutional challenge to an attempt by the Legislature to alter the taxation of tangible and intangible property. Prior to the

adoption of the challenged legislation, tangible property was defined for tax purposes to include all personal property possessing a physical existence, excluding money. Intangible property was defined as all other personal property, including money. 127 Neb. at 432, 255 N.W. at 555. The Legislature attempted to amend these definitions by providing that tangible property would consist of two classes: Class 1, to include all personal property possessing a physical existence; and Class 2, to include stocks, notes, securities of foreign countries, accounts, judgments, liens, bonds, and all demands for labor, or other valuable things, due or to become due. *Id.* at 433, 255 N.W. at 555.

Our court, in assessing the constitutionality of the Legislature's redefinition of tangible property, stated:

May a legislature, under the guise of defining a word, do so with a definition which contravenes our Constitution, and which is not true or legal in fact? Class 2 of tangible property, as defined in House Roll No. 9, is intangible property as defined by the leading dictionaries.

* * *

Can the legislature define and designate as tangible that which is, in fact and in truth, intangible? It may be admitted that the legislature has power to define words used by it, but is this an unlimited power, or is it subject to a reasonable construction? Tangible is the direct opposite of intangible; and can the legislature, under the guise of calling it two separate classes of tangible property, include all intangible property under class 2 of tangible property? In our opinion, there is a limit to the legislature's power to nullify and circumvent constitutional provisions by putting an arbitrary, but improper and unfounded, definition upon a certain word.

The Constitution of Nebraska clearly provides for two kinds of personal property for purposes of taxation, and the legislature has abrogated one of these by the device of calling it a class under the other. The legislature could not directly blot out a provision of the Constitution; has it not, by House Roll No. 9, attempted to do it indirectly?

If the Constitution gives one definition of a legal term, and a statute another, it is the duty of a court to declare that the Constitution governs.

Id. at 433, 255 N.W. at 555-56.

While the above-quoted language seems to cast some doubt on the Legislature's ability to redefine terms for property tax purposes, the situation addressed in Moeller is distinguishable from the proposal currently before the Legislature to alter the definition of real property. As noted in the court's decision, the Nebraska Constitution

was amended in 1920 to separate tangible property from intangible property for tax purposes, in order to permit a different rate of taxation upon tangibles. 127 Neb. at 428, 255 N.W. at 553. Thus, the effect of the Legislature's action, defining as Class 2 of tangible property types of property which were intangible, was to nullify the constitutional distinction between the classes of tangible and intangible property. In contrast, if the Legislature were to alter the definitions of real or personal property for tax purposes, no similar concern should arise, as both real property and taxable personal property are within the class of "all tangible property" under Article VIII, Section 1, of the Nebraska Constitution. See Grainger Bros. Co. v. County Board of Equalization, 180 Neb. 571, 144 N.W.2d 161 (1966) (business inventories and real estate are in the same class for purposes of taxation.) Under these circumstances, it appears that the rationale behind the decision in Moeller is not applicable to the current legislation before the Legislature regarding the definition of real property for tax purposes.¹

In sum, it is our opinion that neither the uniformity requirement of Article VIII, Section 1, of the Nebraska Constitution, nor the Equal Protection Clause of the United States Constitution, preclude the enactment of legislation which would alter the definition of real property established for tax purposes pursuant to Neb.Rev.Stat. §77-103 (Reissue 1986), provided a reasonable and rational basis can be articulated for the definition established. The question of whether a proper basis exists to support any redefinition to be enacted must, in the first instance, be committed to the Legislature's consideration and discretion.

¹ It should be noted that the Legislature could not, by definition, seek to create a class of exempt personal property under the authority granted under Article VIII, Section 2, by defining property which clearly constituted real property to be personal. This, in our opinion, represents the type of action prohibited by application of the principle enunciated in Moeller.

Very truly yours,
ROBERT M. SPIRE
Attorney General
L. Jay Bartel
Assistant Attorney General

(Signed)

7-275-2

cc: Patrick J. O'Donnell
Clerk of the Legislature

MESSAGE FROM THE GOVERNOR

November 9, 1989

Mr. President, Mr. Speaker
and Members of the Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Mr. President and Senators:

This is to inform the honorable members of the Legislature that I have made the following appointment to the Director, Department of Agriculture, requiring legislative confirmation.

Appointee: George Beattie, 2441 Norman Rd., Lincoln, NE
68512, (402) 471-2341.

This appointment is respectfully submitted for your consideration.

Sincerely,
(Signed) KAY A. ORR
Governor

KAO:tr

NOTICE OF COMMITTEE HEARINGS
Health and Human Services

Governor Appointment Tuesday, November 14, 1989 1:00 p.m.
Arthur A. Weaver, D.O. - Board of Health

Governor Appointments Tuesday, November 14, 1989 1:00 p.m.
Child Abuse Prevention Fund Board
Jack E. Hallstrom
Marianna Vargas
Sarah L. Crawford

(Signed) Don Wesely, Chairperson

Natural Resources

Cancel
Governor Appointment Thursday, November 16, 1989 8:00 a.m.
Opal Jensen - Nebraska Gasohol Committee

Reset

Governor Appointment Tuesday, November 14, 1989 8:00 a.m.
Opal Jensen - Nebraska Gasohol Committee

(Signed) Loran Schmit, Chairperson

STANDING COMMITTEE REPORTS

Revenue

LEGISLATIVE BILL 1. Placed on General File as amended.
Standing Committee amendment to LB 1:
AM025S

1 1. On page 2, strike line 15 and insert
2 “mean.”; and strike lines 19 through 25 and insert:
3 “(2) Improvements to the real property or real
4 estate. The sole test for determining whether an item
5 is an improvement shall be whether there is actual
6 annexation to the real property or real estate or
7 something appurtenant thereto. Improvements shall not
8 include, unless specifically enumerated in this
9 subdivision, machinery and equipment used in a trade,
10 business, occupation, profession, industry, or similar
11 activity. Improvements shall include, but not be
12 limited to, the following items of property if there is
13 actual annexation to the real property or real estate or
14 something appurtenant thereto:

15 (a) Buildings;

16 (b) Mobile homes, cabin trailers, and similar
17 property not registered for highway use which is used or
18 intended to be used for residential, office, commercial,
19 agricultural, or other similar purposes and which shall
20 be deemed to be annexed to the real property or real
21 estate if”.

2 2. On page 3, strike lines 1 through 17.

2 3. On page 4, strike lines 3 through 7 and
3 insert:

4 “(d) Storage tanks, storage bins, and storage
5 silos, whether above or below ground, and elevator
6 legs.”; in line 13 after “other” insert “similar”; and
7 strike lines 18 through 23 and insert:

8 “(g) Mains, pipes, pipelines, tanks, well
9 casings, pumps, compressors, valves, and gauges, whether
10 above or below ground, used for the purposes of
11 extraction, transportation, transmission, or storage of

12 steam, oil, gas, or other similar substances, except
13 that the terms real property and real estate shall not
14 be construed to include center pivot or other irrigation
15 systems used for agricultural and horticultural
16 purposes; and”.

17 4. On page 5, line 3, strike “or”; in line 4
18 strike “structure”; and strike lines 5 and 6.

LEGISLATIVE BILL 2. Placed on General File as amended.
(Standing Committee amendment printed separately from the Journal
and on file in the Bill Room - Room 1102 - AM026S.)

LEGISLATIVE BILL 7. Placed on General File as amended.
(Standing Committee amendment printed separately from the Journal
and on file in the Bill Room - Room 1102 - AM024S.)

(Signed) Timothy J. Hall, Chairperson

MOTION - Place LB 6 on General File

Mr. Warner moved to place LB 6 on General File and to suspend
Rule 3, Sec. 19.

Laid over.

ADJOURNMENT

At 5:26 p.m., on a motion by Mr. Withem, the Legislature adjourned
until 1:00 p.m., Tuesday, November 14, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

FOURTH DAY - NOVEMBER 14, 1989**LEGISLATIVE JOURNAL****NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION****FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, November 14, 1989

Pursuant to adjournment, the Legislature met at 1:03 p.m., President Nichol presiding.

PRAYER

The prayer was offered by Senator Hefner.

ROLL CALL

The roll was called and all members were present except Mr. Wehrbein who was excused; and Messrs. Byars, Chambers, Chizek, Dierks, Haberman, Hartnett, Lynch, Moore, Schellpeper, Wesely, Withem, and Mrs. Crosby who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Third Day was approved.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following resolutions: LR 2 and LR 3.

STANDING COMMITTEE REPORTS**Revenue**

LEGISLATIVE BILL 4. Indefinitely postponed.

LEGISLATIVE BILL 5. Indefinitely postponed.

LEGISLATIVE BILL 6. Indefinitely postponed.

LEGISLATIVE BILL 8. Indefinitely postponed.

LEGISLATIVE BILL 9. Indefinitely postponed.

(Signed) Tim Hall, Chairperson

REFERENCE COMMITTEE REPORT

The Legislative Council Executive Board submits the attached report on the referral of a Governor appointment.

Agriculture

George Beattie - Director, Department of Agriculture

(Signed) Bernice Labeledz, Chairperson
Legislative Council
Executive Board

REPORT OF REGISTERED LOBBYISTS

In accordance with LB 987, passed in the 1976 session of the Legislature and amended by LB 4 and LB 41 in the 1977 session of the Legislature, the attached is a list of all Lobbyists who have registered as of November 14, 1989. Further lists listing additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Bluedorn, Ralph - Omaha
Bones, Amy S. - Omaha

Cornhusker Casualty Company
Air Transport Association
Multistate Associates on behalf of
Rubber Mfg. Assn.

Boyer, John K. - Omaha
Boyle, Mike - Omaha

Air Transport Association
Erickson & Sederstrom, P.C.
(Withdrawn 89/07/01)

Christensen, Deborah - Fremont

NE Dietary Managers Association

Crosby, Guenzel, Davis, Kessner & Kuester

Crosby, Robert B. - Lincoln

MCI Telecommunications Company

Seglin, Steven G. - Lincoln

MCI Telecommunications Company

Dunn, Donald L. - Lincoln

Gas 'N Shop, Inc.

Erickson & Sederstrom, P.C.

Thone, Charles - Lincoln

American Petroleum Institute
(Withdrawn 89/10/15)

Hartmann, William - Seward	Nebraska State College System (Withdrawn 89/10/15)
Heil, John P. - Omaha	Recreational Vehicle Industry Association (Withdrawn 89/10/15)
Jahn, Greg - Omaha	Nebraska Land Improvements Contractors Assn.
Johnston, Paul - Lincoln (Withdrawn 89/09/15)	Nemaha County Monitoring Committee
Leach, Dana - Omaha (Withdrawn 89/05/01)	Lieben, Dahlk, Whitted, Houghton and Jahn
Linbo, Steven A. - Omaha (Withdrawn 89/06/26)	Nebraska Cattlemen, Inc.
Litjen, Thomas R. - Omaha	Friends of Non-Profit Corporations
	Cornhusker Casualty Company
	(Withdrawn 89/10/04)
	Archbishop Bergan Mercy Hospital
	Association of Independent Colleges & Universities of NE, Inc.
	Commercial Federal Corporation
	Governors of the Knights of Ak-Sar-Ben
	Health Future Foundation
	Joslyn Art Museum
	Medical Liability Mutual Insurance Company
	Nebraska Association of Convenience Stores
	Preferred Physicians Insurance Company
Matter, Scott - Lincoln	Nebraska Republican Party
Merritt, Jack C. - Lincoln (Withdrawn 89/09/01)	Lancaster County Board of Commissioners
O'Neill Jr., Thomas J. - Lincoln	Assn. of Independent Colleges and Universities of Nebraska, Inc.
Orton, Lee - Lincoln	Nebraska Dental Laboratories Association
Peters, William E. - Lincoln	Railway Progress Institute
Radcliffe, Walter H. - Lincoln	Citicorp Mortgage, Inc. (Withdrawn 89/07/14)
Rasmussen, Dennis - Lincoln	Lancaster County
Ryan, James E. - Lincoln	State Historical Society
Schinzal, Donald L. - Omaha (Withdrawn 89/05/24)	Police Officers' Assn. of Nebraska (Withdrawn 89/06/30)
Schwartz, Harvey - Lincoln (Withdrawn 89/08/21)	Commercial Federal Corporation
	Nebraska Republican Party

Skochdopole, R. A. - Omaha	NE Assn. of Convenience Stores
Smith, Martha Jane - Lincoln	NE Criminal Defense Attorneys
(Withdrawn 89/08/31)	Association
Spray, J. L. - Lincoln	Speedy Distributing, Inc. (Withdrawn
	89/07/25)
Sullivan, J. Scott - Omaha	Nebraska Credit Union League
Taylor, John T. - Lincoln	Nebraska Civil Liberties Union
(Withdrawn 89/06/30)	
Tipton, Kevin W. - Denver, CO	Distilled Spirits Council of the U.S.,
	Inc.
Vrana, Verlon K. Tony - Seward	Association of Nebraska Schools
	(Withdrawn 89/08/26)
	Nebraska State Grange (Withdrawn
	89/08/26)
Wright, Norman H. - Omaha	Multistate Associates on behalf of
	Rubber Mfg. Assn.

ATTORNEY GENERAL'S OPINION

Opinion No. 89072

DATE: November 14, 1989

SUBJECT: Scope of Governor's Special Session Call -
Revenue Committee Amendments to LB 7

REQUESTED BY: Senator Jerome Warner
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding whether certain Revenue Committee Amendments to LB 7 are outside the scope of the Governor's call for the current special session. In its original form, LB 7 proposed to enact a separate classification and exemption from property taxation for railroad rolling stock. The two committee amendments you refer to would add to the bill the following: (1) Provisions which would remove the sales tax exemption for railroad rolling stock; and (2) An increase in the corporate income tax rate.

Article IV, Section 8 of the Nebraska Constitution, provides:

The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

In a recent opinion, this office discussed the guiding principles articulated by the Nebraska Supreme Court in Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 131 N.W.2d 134 (1964), regarding the limitation on the power of the Legislature to act at a special session under this constitutional provision. Attorney General Opinion No. 89069, November 9, 1989. In this opinion, we noted that the court in Arrow Club, supra, stated that: "{t}he Legislature while in special session may enact legislation relating to, germane to, and having a natural connection with the purpose for which it was convened." 177 Neb. at 690, 131 N.W.2d at 137 (Emphasis added).

The Governor's Proclamation outlines four subjects for the Legislature's consideration during the current special session:

1. Amend Chapter 77, Article 1, of the Nebraska Revised Statutes to redefine the real terms real property, personal property and tangible property;
2. Amend the statutory provisions for refunds and injunctions of property taxes in Chapter 77, Article 17, of the Nebraska Revised Statutes;
3. To enact legislation to extend to railroad rolling stock the same tax treatment already granted by §306(1)(d) of the Federal 4-R Act and federal court interpretations of that Act; and
4. Adopt a penalty for the failure to pay property taxes in a timely manner.

In light of the foregoing, it is our opinion that neither of the proposed committee amendments referred to above are sufficiently related to or germane to the subjects stated in the Proclamation to constitute valid legislative business during the current special session. It should be noted that our supreme court, as evidenced by the decision in Arrow Club, supra, has adopted a rather restrictive view in assessing whether legislation enacted in special session falls within the scope of the Governor's call. In our view, the proposed amendments to remove the sales tax exemption for railroad rolling stock and to increase the corporate income tax rate are not within the scope of the Governor's call.

Very truly yours,
ROBERT M. SPIRE
Attorney General

(Signed) L. Jay Bartel
Assistant Attorney General

7-277-2

cc: Patrick J. O'Donnell
Clerk of the Legislature

COMMUNICATION

November 14, 1989

Honorable James D. McFarland
Member of Legislature, District 28
Room 812 State Capitol
Lincoln, NE 68509

Dear Senator McFarland:

On Friday, November 3, 1989 you filed with this office a petition pursuant to Section 50-125 R.R.S. 1943 signed by the requisite number of at least ten senators requesting that the Legislature of Nebraska be called into special or extraordinary session for the purpose stated on the petition.

Also, pursuant to Nebraska Statute 50-125 R.R.S. 1943, I forthwith polled the other members of the Legislature by certified mail. The remaining members had ten days to respond to your call for a special session.

The ten days have now run. I regret to inform you that your call for a special session pursuant to 50-125 and Section 6, Article III of the Constitution of Nebraska has failed in that a total of thirty-three or more Senators have not responded affirmatively in the poll. I can inform you that a total number of four Senators did respond in the affirmative.

As you can see by the lower portion of this letter I am notifying the Speaker, the Clerk and the Governor that the poll for a special or extraordinary session was unsuccessful.

Finally, I inform you that all material relating to this special session call by petition are on file in this office and a matter of public record.

(Signed) Respectfully submitted,
Allen J. Beermann
Secretary of State

cc: Speaker Barrett
Clerk O'Donnell
Governor Kay Orr
File

NOTICE OF COMMITTEE HEARING

Nebraska Retirement Systems

Governor Appointment Thursday, November 16, 1989 8:30 a.m.
Karen L. Brasee - Public Employees Retirement Board

(Signed) Rex Haberman, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 4. Introduced by McFarland, 28th District.

WHEREAS, Anastacio Munoz died on October 10, 1989; and

WHEREAS, Mr. Munoz, better known as Ernie, worked for fifteen years as a security officer at the Capitol and was selected State Employee of the Year in 1984 for his service; and

WHEREAS, Ernie was a good, kind man who made many friends for himself and the state while working as a security officer on the 14th floor of the Capitol; and

WHEREAS, Ernie is greatly missed by all who knew him.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the members of the Legislature express their sympathy to the family of Anastacio Munoz.

2. That a copy of this resolution be presented to the Munoz family as a tangible symbol of the best wishes for the family and as an expression of regret for Ernie's death.

Laid over.

LEGISLATIVE RESOLUTION 5. Introduced by Barrett, 39th District.

WHEREAS, Virginia D. Smith was first elected as a United States Representative from the third district of Nebraska in 1974 and has been reelected seven additional times; and

WHEREAS, Congresswoman Smith has distinguished herself and has brought honor to Nebraska through her dedication, knowledge, and hard work and has been especially outstanding in promoting agriculture and the needs of people in agriculture; and

WHEREAS, Congresswoman Smith has served on numerous committees and boards, has worked in the fields of education and health and on behalf of the status of women, and has represented the

United States in France, Australia, Ireland, Norway, and Latin American countries; and

WHEREAS, Congresswoman Smith has been recognized and has won many awards for her service to agriculture and education; and

WHEREAS, Congresswoman Smith's dedication to the improvement of her country, her state, and her constituents has endeared her to Nebraskans; and

WHEREAS, Congresswoman Smith will not again seek the office of United States Representative from Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature thanks and commends Congresswoman Smith for her dedication and hard work on behalf of Nebraska and Nebraskans.

2. That a copy of this resolution be sent to Congresswoman Smith.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 3. Title read. Considered.

Advanced to E & R for review with 31 ayes, 0 nays, 5 present and not voting, and 13 excused and not voting.

LEGISLATIVE BILL 1. Title read. Considered.

Standing Committee amendment, AM025S, found in the Journal on page 91 for the Third Day, was considered.

Pending.

Mr. McFarland asked unanimous consent to be excused until he returns. No objections. So ordered.

STANDING COMMITTEE REPORTS **General Affairs**

The Committee on General Affairs desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and requests a record vote.

Joseph E. Pinhero - State Electrical Board
William R. Skarda - Liquor Control Commission
Emmett Smith - State Electrical Board

Voting aye: Senators Beck, Elmer, Hall, Kristensen and Smith.
Voting nay: None. Not voting: None. Absent: Senators Hartnett,
R. Johnson, and Labeledz.

(Signed) Jacklyn Smith, Chairperson

Health and Human Services

The Committee on Health and Human Services desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Arthur A. Weaver, D.O. - Board of Health
Marianna Vargas - Child Abuse Prevention Fund Board
Sarah L. Crawford - Child Abuse Prevention Fund Board

Voting aye: Senators Byars, Crosby, Dierks, Lynch, Schellpeper, Wesely. Absent: Senator Goodrich.

Jack E. Hallstrom - Child Abuse Prevention Fund Board

Voting aye: Senators Byars, Dierks, Lynch, Schellpeper, Wesely.
Voting nay: Senator Crosby. Absent: Senator Goodrich.

(Signed) Don Wesely, Chairperson

RESOLUTION

LEGISLATIVE RESOLUTION 6. Introduced by Abboud, 12th District; Lindsay, 9th District.

WHEREAS, the Creighton Prep Junior Jays football team claimed its fifth consecutive state Class A state title with its 17-8 victory over Lincoln Southeast; and

WHEREAS, Creighton Prep has won the Class A state title seven times in this decade; and

WHEREAS, the team is coached by Tom Jaworski.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature extends its congratulations to Coach Jaworski and the Creighton Prep Junior Jays.
2. That a copy of this resolution be sent to the coach and team.

Laid over.

MOTION - Place LB 6 on General File

Mr. Warner moved to place LB 6 on General File, notwithstanding the action of the Revenue Committee, pursuant to Rule 9, Section 5.

Laid over.

SELECT COMMITTEE REPORT
Enrollment and Review

LEGISLATIVE BILL 3. Placed on Select File.

(Signed) John C. Lindsay, Chairperson

GENERAL FILE

LEGISLATIVE BILL 1. Mr. Schmit offered the following amendment to the pending Standing Committee amendment: (Amendment on file in the Clerk's Office - Room 2018 - AM028S.)

Mrs. Langford moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 1 nay, and 23 not voting.

Mr. Schmit requested a record vote on his amendment.

Voting in the affirmative, 15:

Baack	Elmer	Kristensen	Pirsch	Schmit
Bernard-	Hall	Lynch	Rogers	Smith
Stevens	Korshoj	Morrissey	Schimek	Weihing
Chambers				

Voting in the negative, 25:

Abboud	Conway	Haberman	Langford	Robak
Ashford	Coordsen	Hannibal	Lindsay	Schellpeper
Beck	Crosby	Hefner	Moore	Scofield
Beyer	Dierks	Johnson, L.	Nelson	Warner
Byars	Goodrich	Landis	Peterson	Wesely

Present and not voting, 6:

Barrett	Johnson, R.	Labeledz	Lamb	Withem
Hartnett				

Excused and not voting, 3:

Chizek	McFarland	Wehrbein
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The Schmit amendment lost with 15 ayes, 25 nays, 6 present and not voting, and 3 excused and not voting.

Mr. Chambers offered the following amendment to the pending Standing Committee amendment:
FAIS

In subsection "g", beginning in line 12, after "substances," strike "except that the terms real property and real estate shall not be construed to include center pivot or other irrigation systems used for agricultural and horticultural purposes."

Mrs. Langford moved the previous question. The question is, "Shall the debate now close?" The motion lost with 24 ayes, 8 nays, and 17 not voting.

Mr. Chambers moved for a call of the house. The motion prevailed with 17 ayes, 1 nay, and 31 not voting.

Mr. Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 12:

Ashford	Bernard-	Conway	Lynch	Wesely
Baack	Stevens	Elmer	Morrissey	Withem
	Chambers	Lindsay	Schimek	

Voting in the negative, 34:

Abboud	Barrett	Beck	Beyer	Byars
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Coordsen	Hannibal	Kristensen	Nelson	Schmit
Crosby	Hartnett	Labeledz	Peterson	Scofield
Dierks	Hefner	Lamb	Pirsch	Smith
Goodrich	Johnson, L.	Landis	Robak	Warner
Haberman	Johnson, R.	Langford	Rogers	Weihing
Hall	Korshoj	Moore	Schellpeper	

Excused and not voting, 3:

Chizek McFarland Wehrbein

The Chambers amendment lost with 12 ayes, 34 nays, and 3 excused and not voting.

The Chair declared the call raised.

Pending.

ANNOUNCEMENT

Mr. Coordsen announced today is Senator Beck's birthday.

GENERAL FILE

LEGISLATIVE BILL 1. The pending Standing Committee amendment, AM025S, was adopted with 30 ayes, 1 nay, 15 present and not voting, and 3 excused and not voting.

Mr. Elmer offered the following amendment:
(Amendment on file in the Clerk's Office - Room 2018 - AM022S.)

SPEAKER BARRETT PRESIDING

Messrs. Schmit and Moore asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Elmer moved for a call of the house. The motion prevailed with 22 ayes, 0 nays, and 27 not voting.

Mr. Elmer requested a roll call vote on his amendment.

Voting in the affirmative, 22:

Ashford Baack Barrett

Bernard-	Elmer	Kristensen	Morrissey	Schmit
Stevens	Haberman	Labeledz	Pirsch	Smith
Chambers	Hartnett	Lindsay	Rogers	Weihing
Conway	Korshoj	Lynch	Schimek	Withem

Voting in the negative, 20:

Abboud	Coordsen	Hall	Johnson, R.	Robak
Beck	Crosby	Hannibal	Lamb	Schellpeper
Beyer	Dierks	Hefner	Landis	Scofield
Byars	Goodrich	Johnson, L.	Langford	Warner

Present and not voting, 3:

Nelson	Peterson	Wesely
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Excused and not voting, 4:

Chizek	McFarland	Moore	Wehrbein
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The Elmer amendment lost with 22 ayes, 20 nays, 3 present and not voting, and 4 excused and not voting.

Pending.

The Chair declared the call raised.

NOTICE OF COMMITTEE HEARING Agriculture

Governor Appointment Wednesday, November 15, 1989 upon
George Beattie - Department of Agriculture adjournment

(Signed) Rod Johnson, Chairperson

GENERAL FILE

LEGISLATIVE BILL 1. Mr. Conway offered the following amendment:

AM041S

(Amendments to Standing Committee amendments, AM025S)

- 1 1. On page 1, strike beginning with the
- 2 underscored colon in line 2 through line 21 and insert

3 “(1) the entirety of the earth’s surface, (2) all
 4 property that is beneath the earth’s surface, including
 5 permanently affixed property, whether partially or
 6 totally buried, (3) all property that is permanently
 7 affixed to the earth’s surface, and (4) all property
 8 that is constructed above the earth’s surface, by
 9 whatever title or estate the property is held as
 10 defined.

11 For purposes of this section, (a) permanently
 12 affixed property shall mean any structure or property,
 13 including fixtures, which remains unmoved and
 14 permanently attached to the real property or real estate
 15 by any means for any continuous six-month period after
 16 January 1, 1989. Permanently affixed property shall not
 17 include machinery and equipment used for business
 18 purposes or any portion of an irrigation system designed
 19 to move or be moved used in agriculture or horticulture,
 20 and (b) fixture shall mean all property which has been
 1 permanently attached to a structure.”; and strike lines
 2 16 through 25.”.

3 2. Strike amendments 2 through 4 and insert
 4 the following new amendment:

5 “2. Strike the matter beginning on page 3,
 6 line 1, through page 5, line 11, and show the old matter
 7 as stricken.”.

Mr. Conway moved for a call of the house. The motion prevailed
 with 20 ayes, 1 nay, and 28 not voting.

Mr. Conway requested a roll call vote on his amendment.

Voting in the affirmative, 25:

Ashford	Conway	Johnson, R.	Lynch	Schellpeper
Baack	Coordsen	Korshoj	Morrissey	Schmit
Bernard-	Elmer	Kristensen	Nelson	Smith
Stevens	Hall	Labeledz	Pirsch	Weihing
Byars	Hartnett	Lindsay	Rogers	Withem
Chambers				

Voting in the negative, 16:

Abboud	Beck	Crosby	Goodrich	Hefner
Barrett	Beyer	Dierks	Hannibal	Johnson, L.

Lamb Langford Peterson Robak Warner
Landis

Present and not voting, 4:

Haberman Schimek Scofield Wesely

Excused and not voting, 4:

Chizek McFarland Moore Wehrbein

The Conway amendment was adopted with 25 ayes, 16 nays, 4 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

PRESIDENT NICHOL PRESIDING

Advanced to E & R for review with 29 ayes, 5 nays, 11 present and not voting, and 4 excused and not voting.

SPEAKER BARRETT PRESIDING

LEGISLATIVE BILL 2. Title read. Considered.

Standing Committee amendment, AM026S, printed separately from the Journal and referred to on page 92 for the Third Day, was considered.

Mr. Hall offered the following amendment to the pending Standing Committee amendment:

FA2S

To amend the committee amendments to LB 2, page 13, line 1, strike "January 1, 1990," and insert "November 30, 1989."

The Hall amendment was adopted with 28 ayes, 0 nays, 17 present and not voting, and 4 excused and not voting.

Mr. Hall offered the following amendment to the pending Standing Committee amendment:

FA3S

To amend the committee amendments to LB 2 by striking, Section 1. of the committee amendments (the penalty provision) and renumber the remaining sections.

Mrs. Labedz asked unanimous consent to be excused until she returns. No objections. So ordered.

The Hall amendment was adopted with 33 ayes, 7 nays, 6 present and not voting, and 3 excused and not voting.

Mr. Withem offered the following amendment to the pending Standing Committee amendment:

FA4S

Strike section 3, 5 and 6 from committee amendments to LB 2

Mr. McFarland asked unanimous consent to be excused until he returns. No objections. So ordered.

Mrs. Pirsch and Mr. Beyer asked unanimous consent to be excused. No objections. So ordered.

Mrs. Langford and Ms. Schimek asked unanimous consent to be excused until they return. No objections. So ordered.

MRS. LABEDZ PRESIDING

Mr. Ashford asked unanimous consent to be excused. No objections. So ordered.

SPEAKER BARRETT PRESIDING

Pending.

SELECT COMMITTEE REPORT

Enrollment and Review

LEGISLATIVE BILL 1. Placed on Select File as amended.
E & R amendment to LB 1:

AM501S

- 1 1. In the Conway amendment, AM041S, on page
- 2 1, line 9, strike "as" and insert "or"; and in line 19
- 3 after "moved" insert "which is" and strike the comma.

(Signed) John C. Lindsay, Chairperson

RESOLUTIONS

LEGISLATIVE RESOLUTION 7. Introduced by Schmit, 23rd District; Labeledz, 5th District; Lynch, 13th District; Warner, 25th District; Baack, 47th District.

WHEREAS, pursuant to section 50-404 the Legislature established a special committee on January 11, 1989, to investigate matters related to the Franklin Community Federal Credit Union; and

WHEREAS, while the committee has made substantial progress in carrying out its charge, significant issues remain to be investigated; and

WHEREAS, additional funds are needed for the committee to complete its work.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the special committee established by Legislative Resolution 5, Ninety-first Legislature, First Session, is authorized to continue its work with the powers and duties specified in that resolution.

2. That an additional thirty thousand dollars be allocated to the special committee from Legislative Council appropriations to be used to cover necessary committee expenses.

Laid over.

LEGISLATIVE RESOLUTION 8. Introduced by Wesely, 26th District.

WHEREAS, the worldwide spread of the human immunodeficiency virus infection and acquired immunodeficiency syndrome necessitates a worldwide effort of increased education and preventive action to stop acquired immunodeficiency syndrome; and

WHEREAS, the World Health Organization has established December 1 of each year as World AIDS Day, a day to expand and strengthen the worldwide effort to stop acquired immunodeficiency syndrome; and

WHEREAS, the theme for World AIDS Day 1989 Our Lives, Our World; Let's Take Care of Each Other and the continuing theme Join the World-Wide Effort reflect the importance of personal and collective participation in addressing the challenge of acquired immunodeficiency syndrome.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature declares December 1, 1989, as World AIDS Day.

2. That the Legislature urges all of our citizens to take part in activities and observances designed to increase awareness and understanding of acquired immunodeficiency syndrome as a worldwide challenge, to take part in acquired immunodeficiency syndrome prevention activities and programs, and to join the worldwide effort to stop acquired immunodeficiency syndrome.

Laid over.

GENERAL FILE

LEGISLATIVE BILL 2. The pending Withem amendment, FA4S, found in this day's Journal to the pending Standing Committee amendment, was renewed.

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 1 nay, and 23 not voting.

Mr. Chambers requested a record vote on the Withem amendment.

Voting in the affirmative, 14:

Abboud	Chambers	Hartnett	Lynch	Wesely
Baack	Dierks	Korshoj	Schellpeper	Withem
Bernard- Stevens	Hall	Labeledz	Schmit	

Voting in the negative, 26:

Barrett	Goodrich	Johnson, R.	Moore	Rogers
Beck	Haberman	Kristensen	Morrissey	Scofield
Byars	Hannibal	Lamb	Nelson	Smith
Coordsen	Hefner	Landis	Peterson	Warner
Crosby	Johnson, L.	Langford	Robak	Weihing
Elmer				

Present and not voting, 3:

Conway	Lindsay	McFarland
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Excused and not voting, 6:

Ashford	Chizek	Pirsch	Schimek	Wehrbein
Beyer				

The Withem amendment lost with 14 ayes, 26 nays, 3 present and not voting, and 6 excused and not voting.

The Standing Committee amendment, as amended, was adopted with 34 ayes, 2 nays, 7 present and not voting, and 6 excused and not voting.

Mr. Hall moved to indefinitely postpone LB 2.

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 5 nays, and 19 not voting.

Mr. Hall requested a record vote on his motion to indefinitely postpone.

Voting in the affirmative, 12:

Baack	Chambers	Korshoj	Schellpeper	Wesely
Bernard-	Hall	Lynch	Schmit	Withem
Stevens	Hartnett	Morrissey		

Voting in the negative, 25:

Abboud	Crosby	Hannibal	Landis	Robak
Barrett	Dierks	Hefner	Langford	Rogers
Beck	Elmer	Johnson, L.	Moore	Scofield
Byars	Goodrich	Kristensen	Nelson	Warner
Coordsen	Haberman	Lamb	Peterson	Weihing

Present and not voting, 6:

Conway	Labeledz	Lindsay	McFarland	Smith
Johnson, R.				

Excused and not voting, 6:

Ashford	Chizek	Pirsch	Schimek	Wehrbein
Beyer				

The Hall motion to indefinitely postpone lost with 12 ayes, 25 nays, 6 present and not voting, and 6 excused and not voting.

Mr. Landis offered the following amendment:

FA5S

Strike all but §6 and §7 of the committee amendments.

Mr. Hall offered the following amendment to the pending Landis amendment:

FA6S

Add emergency clause.

PRESIDENT NICHOL PRESIDING

The Hall amendment was adopted with 25 ayes, 0 nays, 18 present and not voting, and 6 excused and not voting.

Mr. Hall offered the following amendment to the pending Landis amendment:

FA7S

Sec. 7. By striking the language "sections 2 to 6 of"

The Hall amendment was adopted with 23 ayes, 0 nays, 20 present and not voting, and 6 excused and not voting.

Mr. Hall offered the following amendment to the pending Landis amendment:

FA8S

p. 12, line 4, (of committee amendments) strike "appellant" and insert "prevailing party"

The Hall amendment was adopted with 16 ayes, 1 nay, 27 present and not voting, and 5 excused and not voting.

The pending Landis amendment, as amended, was adopted with 28 ayes, 1 nay, 15 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 29 ayes, 4 nays, 11 present and not voting, and 5 excused and not voting.

VISITORS

Visitors to the Chamber were Shirley Lymn from Minden and her son, Steve Thomlyson, from Kearney.

ADJOURNMENT

At 8:34 p.m., on a motion by Mr. Barrett, the Legislature adjourned until 9:00 a.m., Wednesday, November 15, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

FIFTH DAY - NOVEMBER 15, 1989

LEGISLATIVE JOURNAL

FIFTH DAY - NOVEMBER 15, 1989

LEGISLATIVE JOURNAL

**NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION**

FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, November 15, 1989

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Nichol presiding.

PRAYER

The prayer was offered by Senator McFarland.

ROLL CALL

The roll was called and all members were present except Messrs. Ashford, Chizek, Conway, Haberman, R. Johnson, Lindsay, Moore, Schmit, Wehrbein, Withem, Mrs. Labedz, and Ms. Scofield who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Fourth Day was approved.

**SELECT COMMITTEE REPORT
Enrollment and Review**

LEGISLATIVE BILL 2. Placed on Select File as amended.
E & R amendment to LB 2:
AM502S

- 1 1. Strike the original sections and all
- 2 amendments thereto and insert the following new
- 3 sections:
- 4 "Section 1. That section 77-1775.01, Revised
- 5 Statutes Supplement, 1989, be amended to read as

6 follows:

7 77-1775.01. (1) When property is valued or
8 equalized by the Tax Commissioner or the State Board of
9 Equalization and Assessment and an appeal is taken from
10 such valuation or equalization and the final result of
11 such appeal establishes a lower value than that ~~on~~ upon
12 which taxes have been paid, the amount of taxes paid on
13 ~~or~~ the value in excess of that finally determined value
14 shall be refunded to the ~~taxpayers~~ prevailing party who
15 ~~have~~ has paid such tax.

16 (2) The Tax Commissioner upon receiving a
17 certified copy of such final order shall certify the
18 amount of the refund to the county treasurer of the
19 county or counties to whom the tax was paid or
20 distributed. If only valuation was previously certified
21 to a county or counties, then the Tax Commissioner shall
1 certify the value resulting from the final decision to
2 the official who received the original valuation which
3 was changed by the final order. The refund shall be
4 made in the manner prescribed in subsection (2) of
5 section 77-1736.04. Nothing in this section shall be
6 construed to mean that any taxpayer shall have had to
7 pay any tax under protest or paid tax and claimed a
8 refund.

9 Sec. 2. The changes made to section
10 77-1775.01 by this legislative bill are expressly
11 intended to apply to all litigation pending as of the
12 date this act is passed and approved, according to law.

13 Sec. 3. That original section 77-1775.01,
14 Revised Statutes Supplement, 1989, is repealed.

15 Sec. 4. Since an emergency exists, this act
16 shall be in full force and take effect, from and after
17 its passage and approval, according to law.”.

18 2. Strike beginning with page 1, line 2,
19 through page 2, line 7, and insert “section 77-1775.01,
20 Revised Statutes Supplement, 1989; to change who may be
21 refunded certain taxes; to state intent; to repeal the
22 original section; and to declare an emergency.”.

(Signed) John C. Lindsay, Chairperson

MOTION - Suspend Rules

Mr. Warner moved to suspend rule 9, sec 2 to permit consideration of LR 4, 5, and 6.

The Warner motion to suspend the rules prevailed with 30 ayes, 0 nays, 7 present and not voting, and 12 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 4. Read. Considered.

LR 4 was adopted with 31 ayes, 0 nays, and 18 not voting.

LEGISLATIVE RESOLUTION 5. Read. Considered.

Mr. Chambers offered the following amendment:
FA9S

Amend the last "Whereas" by striking the period and adding:
"thereby creating the opportunity for some of our colleagues to seek that exalted office."

The Chambers amendment lost with 6 ayes, 17 nays, 18 present and not voting, and 8 excused and not voting.

Mr. Lamb requested a record vote on LR 5.

Voting in the affirmative, 40:

Abboud	Crosby	Johnson, L.	McFarland	Schimek
Baack	Dierks	Johnson, R.	Moore	Schmit
Barrett	Goodrich	Korshoj	Nelson	Scotfield
Beck	Haberman	Kristensen	Peterson	Smith
Bernard-	Hall	Labeledz	Pirsch	Warner
Stevens	Hannibal	Lamb	Robak	Weihsing
Beyer	Hartnett	Langford	Rogers	Wesely
Byars	Hefner	Lindsay	Schellpeper	Withem
Coordsen				

Voting in the negative, 0.

Present and not voting, 5:

Chambers	Elmer	Landis	Lynch	Morrissey
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Excused and not voting, 4:

Ashford Chizek Conway Wehrbein

LR 5 was adopted with 40 ayes, 0 nays, 5 present and not voting, and 4 excused and not voting.

LEGISLATIVE RESOLUTION 6. Read. Considered.

Messrs. Ashford, Lynch, and Hartnett asked unanimous consent to have their names added as co-introducers to LR 6. No objections. So ordered.

LR 6 was adopted with 32 ayes, 0 nays, and 17 not voting.

GENERAL FILE

LEGISLATIVE BILL 7. Title read. Considered.

Standing Committee amendment, AM024S, printed separately from the Journal and referred to on page 92 for the Third Day, was considered.

Mr. Schellpeper asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Warner requested a division of the question on the Standing Committee amendment.

The Chair sustained the division of the question.

The first Standing Committee amendment is as follows:

FA10S

Section 3.

Mr. Warner offered the following amendment to the pending Standing Committee amendment:

FA11S

Strike original section 3.

Messrs. Kristensen and Lindsay asked unanimous consent to be excused until they return. No objections. So ordered.

Mr. Haberman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

The Warner amendment was adopted with 25 ayes, 2 nays, 18 present and not voting, and 4 excused and not voting.

Mr. Warner offered the following amendment to the pending Standing Committee amendment:

AM053S

(Amendments to Standing Committee amendments, AM024S)

1. Insert the following new sections:

"Sec. 4. That section 77-628, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-628. ~~For the purpose of ascertaining the average rate of all general taxes provided for in section 77-629, the~~ The county official who prepares the tax list of each county shall certify to the Tax Commissioner, on or before December 1 of each year, the total valuation, the respective levies, the total amount of all general taxes, county, municipal, school, and local, and, for statistical purposes, any other information deemed necessary by the commissioner for the current year; on forms prescribed and furnished by the commissioner.

Sec. 5. That section 77-1249.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-1249.01. One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent February 1, and the second half on July 1, next following the date the tax has become due.

All delinquent taxes shall draw interest from the date they become delinquent at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the interest shall be collected and distributed the same as the tax on which the interest accrues. If such taxes and interest due thereon shall not have been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the same by distress and sale of any property belonging to such delinquent person in like manner as ~~provided in~~

14 ~~sections 77-631 to 77-631.04~~ required of county
15 treasurers and county sheriffs in like cases.

16 Sec. 6. That section 77-631.02, Reissue
17 Revised Statutes of Nebraska, 1943, be amended to read
18 as follows:

19 ~~77-631.02.~~ If any ~~such~~ taxes levied on air
20 carriers as defined in section 77-1244 and interest and
21 penalties due thereon shall not have been paid on July
22 1, following the levy thereof, the total amount shall be
23 a lien in favor of the State of Nebraska upon all money
24 and credits belonging to such ~~companies, firms, or~~
1 ~~individuals,~~ air carriers until the liability therefor
2 is satisfied or otherwise released or discharged, and it
3 shall be lawful for the Tax Commissioner or his or her
4 designated agent to collect such total amount by issuing
5 a distress warrant and making levy upon all money and
6 credits belonging to such ~~companies, firms, or~~
7 ~~individuals~~ air carriers. Such lien shall be filed and
8 enforced pursuant to the Uniform State Tax Lien
9 Registration and Enforcement Act.

10 Sec. 7. That section 77-631.03, Reissue
11 Revised Statutes of Nebraska, 1943, be amended to read
12 as follows:

13 ~~77-631.03.~~ Any person or corporation in
14 possession of any such money and credits belonging to
15 air carriers as defined in section 77-1244, upon which
16 levy has been made shall, upon demand of the Tax
17 Commissioner or his or her agent, surrender the same to
18 the Tax Commissioner or his or her agent. If any person
19 or corporation fails or refuses to surrender the same in
20 accordance with the requirements of this section, such
21 person shall be liable to the State of Nebraska in a sum
22 equal to the value of the property or rights not so
23 surrendered; but not exceeding the amount of the taxes,
24 interest, and penalties for the collection of which such
1 levy has been made.

2 Sec. 8. That section 77-631.04, Reissue
3 Revised Statutes of Nebraska, 1943, be amended to read
4 as follows:

5 ~~77-631.04.~~ The money realized from any ~~such~~
6 levy under sections 6 and 7 of this act shall be first
7 applied by the Tax Commissioner toward payment of any
8 costs incurred by virtue of such levy; and next to the
9 payment of such taxes, interest, and penalties, ; and

10 any balance remaining shall then be paid over to the
11 person entitled thereto.

12 Sec. 9. That section 77-1342, Reissue Revised
13 Statutes of Nebraska, 1943, be amended to read as
14 follows:

15 77-1342. There is hereby created a fund to be
16 known as the Tax Commissioner Revolving Fund to which
17 shall be credited all money received by the agency for
18 services performed to county and multicounty assessment
19 districts and under the provisions of sections
20 60-305.15, ~~77-629~~, and 77-1250, which provisions shall
21 be for the purpose of providing funds to be used to
22 develop appraisal manuals and distribute them to the
23 counties and to engage competent counsel. The county or
24 multicounty assessment district shall be billed by the
1 Tax Commissioner for services rendered. Reimbursements
2 to the Tax Commissioner shall be credited to the fund
3 and expenditures therefrom shall be made only when such
4 funds are available. The Tax Commissioner shall only
5 bill for the actual amount expended in performing the
6 service.

7 This fund shall, at the close of each year, be
8 lapsed to the General Fund, except that no part of the
9 fees received under sections 60-305.15, ~~77-629~~, and
10 77-1250 shall be so lapsed. Any money in the Tax
11 Commissioner Revolving Fund available for investment
12 shall be invested by the state investment officer
13 pursuant to sections 72-1237 to ~~72-1269~~ 72-1276.”.

14 2. On page 1, line 4, after “(1)” insert “The
15 Legislature finds and declares that the levy and
16 collection of property taxes upon the personal property
17 of railroad car line companies, which is composed of
18 railroad rolling stock, has been enjoined by federal
19 court order as a discriminatory tax in violation of
20 section 306(1)(d) of the Railroad Revitalization and
21 Regulatory Reform Act, 49 U.S.C. 11503(b)(4).”

22 “(2)”; strike line 8 and insert “of such car
23 line companies, which is in the same class for taxation
24 purposes but not taxed by virtue of federal court order,
1 thereby diminishing to a”; and in line 13 strike “(2)”
2 and insert “(3)”.

3 3. On page 2, line 1, strike “are” and insert
4 “is”; in line 3 strike “(3)” and insert “(4)”; in line 6
5 strike “be”, after “exempt” insert “the class”, and

- 6 strike "tax" and insert "taxation"; and in line 9 strike
7 "(4)" and insert "(5)".
8 4. On page 4, line 17, strike "77-633", show
9 as stricken, and insert "77-623".
10 5. On page 5, strike line 8 and insert
11 "(11) Railroad"; in line 12 strike "by a
12 common"; and in line 13 strike "carrier by railroad" and
13 insert "for or in railroad transportation".
14 6. On page 53, line 17, strike "section
15 77-602" and insert "sections 77-602, 77-628, 77-631.02
16 to 77-631.04, 77-1249.01, and 77-1342"; and in line 19
17 after the second comma insert "and also sections 77-624
18 to 77-627, 77-629 to 77-631.01, and 77-633, Reissue
19 Revised Statutes of Nebraska, 1943,".
20 7. Renumber the remaining sections and
21 correct internal references accordingly.

The Warner amendment was adopted with 18 ayes, 3 nays, 24 present and not voting, and 4 excused and not voting.

Mr. McFarland asked unanimous consent to be excused until he returns. No objections. So ordered.

The first Standing Committee amendment, as amended, was adopted with 25 ayes, 3 nays, 17 present and not voting, and 4 excused and not voting.

Mr. Schmit asked unanimous consent to be excused until he returns. No objections. So ordered.

The second Standing Committee amendment is as follows:

FA12S

Sections 1, 2, 8, 9, 10, and 13.

Mr. Lindsay offered the following amendment to the pending Standing Committee amendment:

AM043S

(Amendments to Standing Committee amendments, AM024S)

- 1 1. On page 2, after line 2, insert the
2 following new subsection:
3 "(3) The Legislature further finds and
4 declares that by virtue of section 532(b) of the Airport
5 and Airway Improvement Act of 1982, 49 U.S.C. 1513(d),
6 the levy and collection of personal property taxes upon

7 air carrier flight equipment is likely to be declared in
 8 contravention of federal law.”; in line 3 strike “(3)”
 9 and insert “(4)”; in line 5 after “stock” insert “and
 10 air carrier flight equipment”, strike “a”, and strike
 11 “class” and insert “classes”; and in line 9 strike “(4)”
 12 and insert “(5)”.

13 2. On page 5, after line 16, insert the
 14 following new subsection:

15 “(12) For tax years 1989 through 1991,
 16 notwithstanding the provisions of sections 77-1244 to
 17 77-1250.02, air carrier flight equipment as defined in
 18 section 77-1244 shall be exempt from the personal
 19 property tax.”.

Mr. Landis moved the previous question. The question is, “Shall the debate now close?” The motion prevailed with 25 ayes, 0 nays, and 24 not voting.

The Lindsay amendment lost with 3 ayes, 23 nays, 19 present and not voting, and 4 excused and not voting.

The second Standing Committee amendment was adopted with 27 ayes, 4 nays, 14 present and not voting, and 4 excused and not voting.

The third Standing Committee amendment is as follows:

FA13S

Sections 4, 5, 6, and 11.

Mr. Haberman offered the following amendment to the pending Standing Committee amendment:

AM050S

(Amendments to Standing Committee amendments, AM024S)

- 1 1. Strike original sections 4 to 6 and 11.
- 2 2. On page 53, strike beginning with
- 3 “Sections” in line 5 through the period in line 6.
- 4 3. Renumber the remaining sections and correct
- 5 internal references accordingly.

The Haberman amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

The third Standing Committee amendment, as amended, was adopted with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

The fourth Standing Committee amendment is as follows:

FA14S

Sections 7 and 12.

Pending.

STANDING COMMITTEE REPORT
Natural Resources

The Natural Resources Committee desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Mark A. Whitehead, Environmental Control Council

VOTE: Aye: Senators Schmit, Lamb, Beck, Elmer, Morrissey, Smith, and Weihing. Absent: Senator Rod Johnson.

Dwayne G. Smith, Environmental Control Council

VOTE: Aye: Senators Schmit, Lamb, Beck, Elmer, Morrissey, Smith, and Weihing. Absent: Senator Rod Johnson.

Vernon H. Pearson, Environmental Control Council

VOTE: Aye: Senators Schmit, Lamb, Beck, Elmer, Morrissey, Smith, and Weihing. Absent: Senator Rod Johnson.

Darlene "Shortie" Kiefer, Environmental Control Council

VOTE: Aye: Senators Schmit, Lamb, Beck, Elmer, Smith, and Weihing. Absent: Senator Rod Johnson. Not Voting: Senator Morrissey.

(Signed) Loran Schmit, Chairperson

VISITORS

Visitors to the Chamber were Mr. Sam and Dave Heineman from Fremont; and Margaret Griesen and Jef Daniels from Lincoln.

RECESS

At 11:57 a.m., on a motion by Mr. Barrett, the Legislature recessed until 1:30 p.m.

AFTER RECESS

The Legislature reconvened at 1:32 p.m., President Nichol presiding.

ROLL CALL

The roll was called and all members were present except Messrs. Beyer, Chambers, Chizek, R. Johnson, Lamb, McFarland, Schellpeper, Mmes. Labedz, and Pirsch who were excused until they arrive.

GENERAL FILE

LEGISLATIVE BILL 7. Mr. Dierks offered the following amendment to the pending Standing Committee amendment: AM044S

(Amendments to Standing Committee amendments, AM024S)

- 1 1. On page 52, line 3, reinstate the stricken
- 2 matter; in line 4 strike the new matter; in line 6 after
- 3 "income" insert an underscored comma and strike "and"
- 4 and show as stricken; in lines 7 and 8 strike the new
- 5 matter and insert "thirty"; and in line 9 after
- 6 "dollars" insert "but less than one hundred thousand
- 7 dollars, and at the rate of two hundred fifty-four
- 8 percent of such rate on all taxable income equal to or
- 9 in excess of one hundred thousand dollars".

Mr. Hefner requested a ruling of the Chair on whether this portion of the Standing Committee amendment and the Dierks amendment are within the scope of the Governor's call.

The Chair declined to rule on the question because it presents a constitutional issue rather than a procedural issue, which is beyond the province of the Chair to decide.

Mr. Dierks moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 3 nays, and 21 not voting.

Mr. Landis moved for a call of the house. The motion prevailed with 15 ayes, 1 nay, and 33 not voting.

Mr. Landis requested a roll call vote on the Dierks amendment.

Voting in the affirmative, 21:

Baack	Dierks	Lindsay	Nelson	Scofield
Bernard-	Hall	Lynch	Robak	Smith
Stevens	Hartnett	Moore	Rogers	Wesely
Conway	Korshoj	Morrissey	Schimek	Withem
Coordsen	Landis			

Voting in the negative, 22:

Abboud	Crosby	Hefner	Lamb	Schmit
Ashford	Elmer	Johnson, L.	Langford	Warner
Barrett	Goodrich	Kristensen	Peterson	Wehrbein
Beck	Haberman	Labeledz	Pirsch	Weihing
Byars	Hannibal			

Excused and not voting, 6:

Beyer	Chizek	Johnson, R.	McFarland	Schellpeper
Chambers				

The Dierks amendment lost with 21 ayes, 22 nays, and 6 excused and not voting.

The Chair declared the call raised.

Mr. Wehrbein moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 28 ayes, 0 nays, and 21 not voting.

The fourth Standing Committee amendment lost with 2 ayes, 30 nays, 12 present and not voting, and 5 excused and not voting.

Mr. Morrissey asked unanimous consent to be excused until he returns. No objections. So ordered.

Advanced to E & R for review with 26 ayes, 8 nays, 9 present and not voting, and 6 excused and not voting.

Mr. Hannibal asked unanimous consent to be excused until he returns. No objections. So ordered.

RESOLUTION

LEGISLATIVE RESOLUTION 9. Introduced by Hefner, 19th District.

WHEREAS, the Cedar Catholic High School girls volleyball team won the 1989 Class C-1 girls volleyball state championship; and

WHEREAS, the winning of the Class C-1 championship took teamwork, good attitudes, and long hours of practice; and

WHEREAS, the Cedar Catholic team is coached by Mary Schroeder and Dawn Fincher.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Legislature extends its congratulations to Coaches Schroeder and Fincher and the Cedar Catholic High School girls volleyball team.

2. That a copy of this resolution be sent to the coaches and team.

Laid over.

MOTION - Place LB 6 on General File

Mr. Warner renewed his pending motion found in the Journal on page 102 to place LB 6 on General File, notwithstanding the action of the Revenue Committee, pursuant to Rule 9, Section 5.

Mr. Dierks asked unanimous consent to be excused. No objections. So ordered.

SPEAKER BARRETT PRESIDING

Mr. Haberman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 2 nays, and 22 not voting.

Mr. Warner moved for a call of the house. The motion prevailed with 17 ayes, 0 nays, and 32 not voting.

Mr. Warner requested a roll call vote on his motion to place LB 6 on General File.

Voting in the affirmative, 25:

Ashford	Coordsen	Landis	Rogers	Warner
Baack	Haberman	Lynch	Schellpeper	Wehrbein
Bernard-	Hall	Moore	Schimek	Weihing
Stevens	Hartnett	Nelson	Scofield	Wesely
Beyer	Labedz	Robak	Smith	Withem
Conway				

Voting in the negative, 17:

Abboud	Elmer	Johnson, R.	Lamb	Peterson
Barrett	Goodrich	Korshoj	Langford	Pirsch
Beck	Hefner	Kristensen	Lindsay	Schmit
Byars	Johnson, L.			

Present and not voting, 1:

Crosby

Excused and not voting, 6:

Chambers	Dierks	Hannibal	McFarland	Morrissey
Chizek				

The Warner motion prevailed with 25 ayes, 17 nays, 1 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

GENERAL FILE

LEGISLATIVE BILL 6. Title read. Considered.

Mr. Landis offered the following amendment:

AM056S

- 1 1. Strike the original sections and insert
- 2 the following new sections:
- 3 "Section 1. That section 77-2734.02, Revised
- 4 Statutes Supplement, 1988, be amended to read as
- 5 follows:
- 6 77-2734.02. (1) A tax is hereby imposed for
- 7 each taxable year on the taxable income of every

8 corporate taxpayer that is doing business in this state
9 at a rate equal to one hundred fifty and eight-tenths
10 percent of the primary rate imposed on individuals under
11 section 77-2701.01 on the first fifty thousand dollars
12 of taxable income, ~~and~~ at the rate of two hundred ~~eleven~~
13 thirty percent of such rate on all taxable income in
14 excess of fifty thousand dollars but less than one
15 hundred thousand dollars, and at the rate of two hundred
16 fifty-four percent of such rate on all taxable income
17 equal to or in excess of one hundred thousand dollars.
18 The resultant rates shall be rounded to the nearest one
19 hundredth of one percent.

20 (a) For corporate taxpayers with a fiscal year
21 that does not coincide with the calendar year, the
1 individual rate used for this subsection shall be the
2 rate in effect on the first day, or the day deemed to be
3 the first day, of the taxable year.

4 (b) For fiscal years beginning before January
5 1, 1968, the rate initially set shall apply for the
6 period from January 1, 1968, to the end of that fiscal
7 year.

8 (2) For a corporate taxpayer that is subject
9 to tax in another state, its taxable income shall be the
10 portion of the taxpayer's federal taxable income, as
11 adjusted, that is determined to be connected with the
12 taxpayer's operations in this state pursuant to sections
13 77-2734.05 to 77-2734.15.

14 (3) Each corporate taxpayer shall file only
15 one income tax return for each taxable year.

16 Sec. 2. This act shall be operative for all
17 taxable years beginning or deemed to begin on or after
18 January 1, 1990, under the Internal Revenue Code of
19 1986, as amended.

20 Sec. 3. That original section 77-2734.02,
21 Revised Statutes Supplement, 1988, is repealed.

22 Sec. 4. Since an emergency exists, this act
23 shall be in full force and take effect, from and after
24 its passage and approval, according to law.”.

Mr. Abboud asked unanimous consent to be excused until he returns.
No objections. So ordered.

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 1 nay, and 23 not voting.

Mr. Landis moved for a call of the house. The motion prevailed with 28 ayes, 1 nay, and 20 not voting.

Mr. Hall requested a record vote on the Landis amendment.

Voting in the affirmative, 19:

Baack	Haberman	Lynch	Robak	Smith
Bernard-	Hall	McFarland	Rogers	Weihing
Stevens	Hartnett	Moore	Schellpeper	Wesely
Conway	Landis	Nelson	Schimek	Withem

Voting in the negative, 24:

Abboud	Byars	Hannibal	Labeledz	Pirsch
Ashford	Coorsden	Hefner	Lamb	Schmit
Barrett	Crosby	Johnson, L.	Langford	Warner
Beck	Elmer	Johnson, R.	Lindsay	Wehrbein
Beyer	Goodrich	Kristensen	Peterson	

Present and not voting, 2:

Korshoj Scofield

Excused and not voting, 4:

Chambers Chizek Dierks Morrissey

The Landis amendment lost with 19 ayes, 24 nays, 2 present and not voting, and 4 excused and not voting.

The Chair declared the call raised.

Mr. Hall moved to indefinitely postpone LB 6.

The Hall motion to indefinitely postpone prevailed with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

UNANIMOUS CONSENT - Members Excused

Messrs. Withem, Ashford, and Landis asked unanimous consent to be excused until they return. No objections. So ordered.

NOTICE OF COMMITTEE HEARING
Government, Military and Veterans Affairs

The Committee on Government, Military and Veterans Affairs will begin its public hearings on Thursday, November 16, at 9:00 a.m. (Not upon adjournment as listed on the interim hearing schedule) in room 2102 of the State Capitol.

(Signed) Dennis Baack, Chairperson

SELECT FILE

LEGISLATIVE BILL 3. Advanced to E & R for engrossment.

LEGISLATIVE BILL 1. E & R amendment, AM501S, found in the Journal on page 108 for the Fourth Day, was adopted.

Mr. Elmer offered the following amendment:
(Amendment on file in the Clerk's Office - Room 2018 - AM047S.)

Mr. Elmer withdrew his pending amendment.

Messrs. Conway and Lamb offered the following amendment:
AM054S

- 1 1. Strike the original sections and all
- 2 amendments thereto and insert the following new
- 3 sections:
- 4 "Section 1. That section 77-103, Reissue
- 5 Revised Statutes of Nebraska, 1943, be amended to read
- 6 as follows:
- 7 77-103. The terms real property, real estate,
- 8 and lands shall ~~include~~ mean city and village lots and
- 9 all other lands, and all buildings, fixtures,
- 10 improvements, cabin trailers or mobile homes which shall
- 11 have been permanently attached to the real estate upon
- 12 which they are situated, mines, minerals, quarries,
- 13 mineral springs and wells, oil and gas wells, overriding
- 14 royalty interests and production payments with respect
- 15 to oil or gas leases, units of beneficial interest in
- 16 trusts, the corpus of which includes any of the

17 foregoing, and privileges pertaining thereto, pipelines,
18 railroad track structures, electrical and
19 telecommunication poles, towers, lines, and all items
20 actually annexed to such property, and any interest
21 pertaining to the real property or real estate.

1 The sole test for determining whether an item
2 is a fixture or an improvement shall be whether there is
3 actual annexation to the real property or real estate or
4 something appurtenant thereto. Unless specifically
5 enumerated in this section, real property and real
6 estate shall not include machinery and equipment used
7 for business purposes or center pivot or other
8 irrigation systems of a type used for agricultural or
9 horticultural purposes.

10 Sec. 2. The changes made to section 77-103 by
11 this legislative bill are expressly intended to apply to
12 all litigation concerning ad valorem property taxes for
13 the 1989 calendar year, including all litigation pending
14 on the effective date of this act.

15 Sec. 3. This act shall become operative on
16 January 1, 1989.

17 Sec. 4. If any section in this act or any
18 part of any section shall be declared invalid or
19 unconstitutional, such declaration shall not affect the
20 validity or constitutionality of the remaining portions
21 thereof.

22 Sec. 5. That original section 77-103, Reissue
23 Revised Statutes of Nebraska, 1943, is repealed.

24 Sec. 6. Since an emergency exists, this act
1 shall be in full force and take effect, from and after
2 its passage and approval, according to law.”.

Ms. Scofield and Mr. Abboud asked unanimous consent to be excused until they return. No objections. So ordered.

The Conway-Lamb amendment was adopted with 25 ayes, 0 nays, 15 present and not voting, and 9 excused and not voting.

Advanced to E & R for engrossment.

Mrs. Pirsch asked unanimous consent to be excused. No objections. So ordered.

SELECT COMMITTEE REPORT

Enrollment and Review

LEGISLATIVE BILL 7. Placed on Select File as amended.
(E & R amendment on file in the Clerk's Office - Room 2018 - AM503S.)

(Signed) John C. Lindsay, Chairperson

SELECT FILE

LEGISLATIVE BILL 2. E & R amendment, AM502S, found in this day's Journal on page 114, was adopted.

Advanced to E & R for engrossment.

EASE

The Legislature was at ease from 5:15 p.m. until 5:23 p.m.

SELECT FILE

LEGISLATIVE BILL 7. E & R amendment, AM503S, referred to in this day's Journal, was adopted.

Mr. Hall offered the following amendment:
AM057S

(Amendments to AM503S)

- 1 1. Strike sections 3 to 8.
- 2 2. On page 5, line 3, strike the new matter
- 3 and reinstate the stricken matter; and in line 18 strike
- 4 "Railroad" and insert "For tax years 1989 through 1991,
- 5 railroad".
- 6 3. On page 10, strike beginning with
- 7 "sections" in line 18 through "and" in line 20; and
- 8 strike beginning with "and" in line 21 through "are" in
- 9 line 23 and insert "is".
- 10 4. Renumber the remaining sections
- 11 accordingly.

Mr. Hall withdrew his pending amendment.

Mr. Hall requested a machine vote on the advancement of the bill.

Advanced to E & R for engrossment with 27 ayes, 7 nays, 6 present and not voting, and 9 excused and not voting.

EASE

The Legislature was at ease from 5:36 p.m. until 6:09 p.m.

SELECT COMMITTEE REPORTS

Enrollment and Review

Correctly Engrossed

The following bills were correctly engrossed: 1, 2, 3, and 7.

(Signed) John C. Lindsay, Chairperson

Enrollment and Review Change to LB 1

The following changes, required to be reported for publication in the Journal, have been made:

ER601S

1. In the Conway-Lamb amendment, AM054S, on page 1, line 17, "and" has been inserted after the first underscored comma.

2. On page 1, line 2, "sections 77-103, 77-104, and 77-105" has been struck and "section 77-103" inserted; the matter beginning with the first "personal" in line 5 through "property" in line 6 has been struck and "and lands" inserted; and in line 9 "sections" has been struck and "section" inserted.

(Signed) Mary E. Sommermeyer
E & R Attorney

ADJOURNMENT

At 6:10 p.m., on a motion by Mr. Kristensen, the Legislature adjourned until 9:00 a.m., Thursday, November 16, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

SIXTH DAY - NOVEMBER 16, 1989

LEGISLATIVE JOURNAL

SIXTH DAY - NOVEMBER 16, 1989

LEGISLATIVE JOURNAL

**NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION**

SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, November 16, 1989

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Nichol presiding.

PRAYER

The prayer was offered by Senator Wehrbein.

ROLL CALL

The roll was called and all members were present except Messrs. Ashford, Chambers, Hall, Hartnett, Lamb, Lindsay, Moore, Morrissey, Withem, Mrs. Pirsch, and Ms. Schimek who were excused; and Messrs. R. Johnson, Landis, Lynch, Schmit, Weihing, Mmes. Beck, Nelson, and Smith who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Fifth Day was approved.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following resolutions: LR 4, LR 5, and LR 6.

**NOTICE OF COMMITTEE HEARING
Government, Military and Veterans Affairs**

The Committee on Government, Military and Veterans Affairs will hold its public hearings today in room 1117, not room 2102, as previously announced.

(Signed) Dennis Baack, Chairperson

STANDING COMMITTEE REPORT
Agriculture

The Committee on Agriculture desires to report favorably upon the appointment listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

George Beattie, Director - Department of Agriculture

Voting aye: Senators Coordsen, Hefner, Kristensen, Lindsay, Morrissey and R. Johnson. Voting nay: None. Absent: Senators Chambers and Elmer.

(Signed) Rod Johnson, Chairperson

MOTION - Suspend Rules

Mr. Hefner moved to suspend the rules, Rule 9, Section 2, to permit consideration of LR 8 and LR 9.

The Hefner motion prevailed with 30 ayes, 0 nays, 1 present and not voting, and 18 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 8. Read. Considered.

LR 8 was adopted with 20 ayes, 0 nays, and 29 not voting.

Mrs. Smith asked unanimous consent to be excused until she returns. No objections. So ordered.

LEGISLATIVE RESOLUTION 9. Read. Considered.

LR 9 was adopted with 22 ayes, 0 nays, and 27 not voting.

MOTION - Approve Appointments

Mr. Elmer moved the adoption of the report of the General Affairs Committee for the following Governor appointments found in the Journal on page 100: State Electrical Board - Joseph E. Pinhero and Emmett Smith; Liquor Control Commission - William R. Skarda.

Voting in the affirmative, 29:

Abboud	Chizek	Haberman	Labeledz	Schellpeper
Beck	Coordsen	Hannibal	Langford	Schmit
Bernard-	Crosby	Hefner	Lynch	Warner
Stevens	Dierks	Johnson, L.	Nelson	Wehrbein
Beyer	Elmer	Johnson, R.	Peterson	Weihing
Byars	Goodrich	Kristensen	Rogers	Wesely

Voting in the negative, 0.

Present and not voting, 7:

Baack	Conway	McFarland	Robak	Scofield
Barrett	Korshoj			

Excused and not voting, 13:

Ashford	Hartnett	Lindsay	Pirsch	Smith
Chambers	Lamb	Moore	Schimek	Withem
Hall	Landis	Morrissey		

These appointments were confirmed with 29 ayes, 0 nays, 7 present and not voting, and 13 excused and not voting.

Mr. Wesely moved the adoption of the report of the Health and Human Services Committee for the following Governor appointments found in the Journal on page 101: Child Abuse Prevention Fund Board - Marianna Vargas, Sarah L. Crawford, and Jack E. Hallstrom; Board of Health - Arthur A. Weaver.

Voting in the affirmative, 27:

Abboud	Beyer	Goodrich	Kristensen	Nelson
Barrett	Byars	Haberman	Labeledz	Rogers
Beck	Conway	Hefner	Landis	Schellpeper
Bernard-	Crosby	Johnson, L.	Langford	Schmit
Stevens	Dierks	Johnson, R.	Lynch	Warner

Wehrbein Weihing Wesely

Voting in the negative, 0.

Present and not voting, 10:

Baack	Coordsen	Hannibal	McFarland	Robak
Chizek	Elmer	Korshoj	Peterson	Scofield

Excused and not voting, 12:

Ashford	Hartnett	Moore	Pirsch	Smith
Chambers	Lamb	Morrissey	Schimek	Withem
Hall	Lindsay			

These appointments were confirmed with 27 ayes, 0 nays, 10 present and not voting, and 12 excused and not voting.

Mr. Schmit moved the adoption of the report of the Natural Resources Committee for the following Governor appointments found in the Journal on page 123: Environmental Control Council - Mark A. Whitehead, Dwayne G. Smith, Vernon H. Pearson, and Darlene Kiefer.

Voting in the affirmative, 26:

Abboud	Conway	Haberman	Langford	Schmit
Beck	Coordsen	Hannibal	Lynch	Warner
Bernard-	Crosby	Johnson, L.	Nelson	Wehrbein
Stevens	Dierks	Johnson, R.	Rogers	Weihing
Beyer	Elmer	Kristensen	Schellpeper	Wesely
Byars	Goodrich			

Voting in the negative, 0.

Present and not voting, 11:

Baack	Hefner	Labeledz	McFarland	Robak
Barrett	Korshoj	Landis	Peterson	Scofield
Chizek				

Excused and not voting, 12:

Ashford	Chambers	Hall	Hartnett	Lamb
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Lindsay	Morrissey	Schimek	Smith	Withem
Moore	Pirsch			

These appointments were confirmed with 26 ayes, 0 nays, 11 present and not voting, and 12 excused and not voting.

RESOLUTION

LEGISLATIVE RESOLUTION 10. Introduced by Wesely, 26th District; Barrett, 39th District.

WHEREAS, Patrick J. O'Donnell has served with distinction as Clerk of the Legislature since 1978; and

WHEREAS, the Nebraska State Legislature is a member of the National Conference of State Legislatures; and

WHEREAS, the National Conference of State Legislatures is an organization comprised of approximately 7,500 state legislators and 20,000 legislative staff from the 50 states; and

WHEREAS, the affairs of the National Conference of State Legislatures are managed by seven officers comprised of four legislators and three staff and are elected by the members of the National Conference of State Legislatures; and

WHEREAS, Patrick J. O'Donnell was elected as an officer by the National Conference of State Legislatures and currently serves as Staff Vice-Chair; and

WHEREAS, Patrick J. O'Donnell will commence his term as Staff Chair of the National Conference of State Legislatures, the highest ranking staff office, on December 1, 1989, for the ensuing year; and

WHEREAS, his election as Staff Chair reflects favorably upon the State of Nebraska.

NOW, THEREFORE, BE IT RESOLVED

1. That the Nebraska Legislature commends and congratulates Patrick J. O'Donnell for his election to the highest ranking staff office within the National Conference of State Legislatures; and

2. That the Nebraska Legislature wishes Patrick J. O'Donnell a fruitful and enjoyable year as Staff Chair of the National Conference of State Legislatures.

Laid over.

VISITORS

Visitors to the Chamber were Tom Furey from Omaha.

ADJOURNMENT

At 9:28 a.m., on a motion by Mr. Weihing, the Legislature adjourned until 9:00 a.m., Friday, November 17, 1989.

Patrick J. O'Donnell
Clerk of the Legislature

SEVENTH DAY - NOVEMBER 17, 1989

LEGISLATIVE JOURNAL

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**NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION**

SEVENTH DAY

Legislative Chamber, Lincoln, Nebraska
Friday, November 17, 1989

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Nichol presiding.

PRAYER

The prayer was offered by Rev. Harland Johnson, Chaplain Coordinator.

ROLL CALL

The roll was called and all members were present except Mr. Conway and Ms. Schimek who was excused; and Messrs. Abboud, Ashford, Goodrich, R. Johnson, Landis, Lynch, and Morrissey who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the Sixth Day was approved.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following resolutions: LR 8 and LR 9.

MOTION - Suspend Rules

Mr. Barrett moved to suspend the rules, Rule 4, Section 6 and Rule 9, Section 2, to permit consideration of LR 10 and LR 11.

The Barrett motion prevailed with 33 ayes, 0 nays, 7 present and not voting, and 9 excused and not voting.

RESOLUTIONS

LEGISLATIVE RESOLUTION 10. Read. Considered.

LR 10 was adopted with 42 ayes, 0 nays, and 7 not voting.

Mr. Baack asked unanimous consent to be excused until he returns. No objections. So ordered.

LEGISLATIVE RESOLUTION 11. Introduced by Scofield, 49th District; Wehrbein, 2nd District; Wesely, 26th District.

WHEREAS, college athletics play an important part in the development of our young people, help bond communities together, and display the talents of student athletes; and

WHEREAS, Chadron State College, Peru State College, and Nebraska Wesleyan University football teams are among only sixteen teams in the country to compete in NAIA playoff games; and

WHEREAS, the Wesleyan Plainsmen travel to meet the Chadron State Eagles, Saturday, November 18, 1989, and the Peru State Bobcats host Baker College of Kansas; and

WHEREAS, regardless of the outcomes of these games, the athletes, students, faculty, staff, and supporters of these three Nebraska institutions will have an opportunity to share in the spirit of intercollegiate athletics and academic interaction and serve Nebraska as ambassadors of goodwill.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SPECIAL SESSION:

1. That the Nebraska Wesleyan University, Peru State College, and Chadron State College football teams be congratulated for their representation of our state in the NAIA Division II playoffs and encouraged on the way to their respective championships.

2. That a copy of this resolution be sent to the coach of the Wesleyan Plainsmen football team, the coach of Chadron State Eagles football team, and the coach of the Peru State Bobcats football team.

LR 11 was adopted with 34 ayes, 0 nays, and 15 not voting.

MOTION - Approve Appointment

Mr. R. Johnson moved the adoption of the report of the Agriculture Committee for the following Governor appointment found in the Journal on page 135: George Beattie, Director - Department of Agriculture.

Voting in the affirmative, 29:

Barrett	Crosby	Hannibal	McFarland	Schellpeper
Beck	Dierks	Johnson, R.	Morrissey	Smith
Bernard-	Elmer	Korshoj	Nelson	Warner
Stevens	Goodrich	Kristensen	Peterson	Wehrbein
Chizek	Haberman	Labeledz	Pirsch	Weihsing
Coordsen	Hall	Landis	Rogers	Withem

Voting in the negative, 1:

Chambers

Present and not voting, 14:

Ashford	Hartnett	Lamb	Moore	Scofield
Beyer	Hefner	Langford	Robak	Wesely
Byars	Johnson, L.	Lindsay	Schmit	

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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The appointment was confirmed with 29 ayes, 1 nay, 14 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT

Business and Labor

The Committee on Business and Labor desires to report favorably upon the appointment listed below. The Committee suggests the appointment to the Commission of Industrial Relations be confirmed by the Legislature and suggests a record vote.

Frankie Dawson

Vote: Aye: Senators Coordsen, Hefner, Korshoj and Morrissey.
Absent: Senators Chambers, Lindsay and Pirsch.

(Signed) George Coordsen, Chairperson

MOTION - Approve Appointment

Mr. Coordsen moved the adoption of the report of the Business and Labor Committee for the following Governor appointment found in this day's Journal: Frankie Dawson - Commission of Industrial Relations.

Voting in the affirmative, 30:

Barrett	Coordsen	Korshoj	Pirsch	Smith
Beck	Crosby	Kristensen	Robak	Warner
Bernard-	Elmer	Lamb	Rogers	Wehrbein
Stevens	Haberman	McFarland	Schellpeper	Weihing
Beyer	Hall	Morrissey	Schmit	Wesely
Byars	Hartnett	Peterson	Scofield	Withem
Chizek				

Voting in the negative, 1:

Chambers

Present and not voting, 13:

Ashford	Hannibal	Johnson, R.	Langford	Moore
Dierks	Hefner	Labeledz	Lindsay	Nelson
Goodrich	Johnson, L.	Landis		

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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The appointment was confirmed with 30 ayes, 1 nay, 13 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT **Nebraska Retirement Systems**

The Committee on Nebraska Retirement Systems desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Karen L. Brasee - Public Employees Retirement Board

VOTE: Aye: Senators Haberman, Coordsen, Elmer, Schellpeper, Warner. Nay: None. Absent: Senator Abboud.

(Signed) Rex Haberman, Chairperson

MOTION - Approve Appointment

Mr. Haberman moved the adoption of the report of the Nebraska Retirement Systems Committee for the following Governor appointment found in this day's Journal: Karen L. Brasee - Public Employees Retirement Board.

Voting in the affirmative, 29:

Barrett	Dierks	Korshoj	Nelson	Schmit
Beck	Elmer	Kristensen	Peterson	Smith
Beyer	Goodrich	Labeledz	Pirsch	Wehrbein
Byars	Haberman	Lamb	Robak	Weihing
Coordsen	Hall	McFarland	Rogers	Withem
Crosby	Johnson, L.	Morrissey	Schellpeper	

Voting in the negative, 1:

Chambers

Present and not voting, 14:

Ashford	Chizek	Hefner	Langford	Scofield
Bernard-	Hannibal	Johnson, R.	Lindsay	Warner
Stevens	Hartnett	Landis	Moore	Wesely

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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The appointment was confirmed with 29 ayes, 1 nay, 14 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT**Judiciary**

The Committee on Judiciary desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Carlos Alvarez - Parole Board

VOTE: Aye: Senators Chizek, Abboud, Nelson, Kristensen and Lindsay. Absent: Senators Chambers, McFarland and Pirsch.

(Signed) Jerry Chizek, Chairperson

MOTION - Approve Appointment

Mr. Chizek moved the adoption of the report of the Judiciary Committee for the following Governor appointment found in this day's Journal: Carlos Alvarez - Parole Board.

Voting in the affirmative, 26:

Barrett	Haberman	Lamb	Rogers	Warner
Beyer	Hannibal	Morrissey	Schellpeper	Wehrbein
Chizek	Hartnett	Nelson	Schmit	Weihing
Crosby	Johnson, L.	Peterson	Scofield	Wesely
Dierks	Labedz	Robak	Smith	Withem
Elmer				

Voting in the negative, 1:

Chambers

Present and not voting, 17:

Ashford	Byars	Hefner	Landis	McFarland
Beck	Coordsen	Johnson, R.	Langford	Moore
Bernard-	Goodrich	Korshoj	Lindsay	Pirsch
Stevens	Hall	Kristensen		

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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The appointment was confirmed with 26 ayes, 1 nay, 17 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT **Natural Resources**

The Committee on Natural Resources desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Elwin M. Larson - Environmental Control Council

VOTE: Aye: Senators Schmit, Elmer, Morrissey, Smith, and Weihing.
Absent: Senators Lamb, Beck, and Rod Johnson.

(Signed) Loran Schmit, Chairperson

MOTION - Approve Appointment

Mr. Schmit moved the adoption of the report of the Natural Resources Committee for the following Governor appointment found in this day's Journal: Elwin M. Larson, Environmental Control Council.

Voting in the affirmative, 29:

Beck	Dierks	Johnson, L.	Morrissey	Smith
Bernard-	Goodrich	Korshoj	Nelson	Warner
Stevens	Haberman	Kristensen	Robak	Wehrbein
Beyer	Hall	Labeledz	Schellpeper	WeiHING
Chizek	Hannibal	Lamb	Schmit	Wesely
Crosby	Hartnett	Langford	Scofield	Withem

Voting in the negative, 1:

Chambers

Present and not voting, 14:

Ashford	Coordsen	Johnson, R.	McFarland	Pirsch
Barrett	Elmer	Landis	Moore	Rogers
Byars	Hefner	Lindsay	Peterson	

Excused and not voting, 5:

Abboud Baack Conway Lynch Schimek

The appointment was confirmed with 29 ayes, 1 nay, 14 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT

Revenue

The Committee on Revenue desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Property Assessment and Taxation Commission

George E. Tesar, Jr.

Irene Hunsberger

John R. Anderson

Robert R. Root

Charles Strasburg

Sylvia B. Wagner

James E. Brooks

Robert L. Morrison

Alice Ryschon

Nebraska Agricultural Land Valuation Advisory Board

Bruce B. Johnson

VOTE: Aye: Senators Hefner, Haberman, Labedz, Landis, Peterson and Rogers. Absent: Senators Hall and Hartnett.

(Signed) Tim Hall, Chairperson

MOTION - Approve Appointments

Mr. Hefner moved the adoption of the report of the Revenue Committee for the following Governor appointments found in this day's Journal: Property Assessment and Taxation Commission - George E. Tesar, Jr., Irene Hunsberger, John R. Anderson, Robert R. Root, Charles Strasburg, Sylvia B. Wagner, James E. Brooks, Robert L. Morrison, Alice Ryschon; and Nebraska Agricultural Land Valuation Advisory Board - Bruce B. Johnson.

Voting in the affirmative, 34:

Barrett	Dierks	Hefner	Langford	Rogers
Beck	Elmer	Johnson, L.	McFarland	Schellpeper
Bernard-	Goodrich	Korshoj	Morrissey	Schmit
Stevens	Haberman	Kristensen	Nelson	Scofield
Beyer	Hall	Labeledz	Peterson	Wehrbein
Byars	Hannibal	Lamb	Pirsch	Weihing
Crosby	Hartnett	Landis	Robak	Withem

Voting in the negative, 1:

Chambers

Present and not voting, 9:

Ashford	Coordsen	Lindsay	Smith	Wesely
Chizek	Johnson, R.	Moore	Warner	

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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These appointments were confirmed with 34 ayes, 1 nay, 9 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT

Transportation

The Committee on Transportation desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

State Highway Commission

Soren S. Jensen

James D. Keenan

George A. Miles

Donna M. Wanitschke

Voting aye: Senators Lamb, Beyer, Byars, Peterson, Rogers and Schellpeper. Voting nay: None. Absent: Senators Goodrich, Robak.

Motor Vehicle Industry Licensing Board

Dana Trowbridge

Voting aye: Senators Lamb, Beyer, Byars, Peterson, Rogers and Schellpeper. Voting nay: None. Absent: Senators Goodrich, Robak.

(Signed) Howard Lamb, Chairperson

MOTION - Approve Appointments

Mr. Lamb moved the adoption of the report of the Transportation Committee for the following Governor appointments found in this day's Journal: State Highway Commission - Soren S. Jensen, James D. Keenan, George A. Miles, Donna M. Wanitschke.

Voting in the affirmative, 34:

Ashford	Coordsen	Hartnett	McFarland	Scofield
Barrett	Crosby	Johnson, L.	Nelson	Smith
Beck	Dierks	Korshoj	Peterson	Warner
Bernard-	Elmer	Kristensen	Pirsch	Wehrbein
Stevens	Goodrich	Lamb	Robak	Weihing
Beyer	Haberman	Landis	Rogers	Wesely
Byars	Hall	Langford	Schellpeper	Withem

Voting in the negative, 1:

Chambers

Present and not voting, 9:

Chizek	Hefner	Labeledz	Moore	Schmit
Hannibal	Johnson, R.	Lindsay	Morrissey	

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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These appointments were confirmed with 34 ayes, 1 nay, 9 present and not voting, and 5 excused and not voting.

Mr. Lamb moved the adoption of the report of the Transportation Committee for the following Governor appointment found in this day's Journal: Dana Trowbridge - Motor Vehicle Industry Licensing Board.

Voting in the affirmative, 30:

Ashford	Crosby	Johnson, L.	Morrissey	Schellpeper
Barrett	Dierks	Korshoj	Nelson	Schmit
Beck	Elmer	Kristensen	Peterson	Smith
Beyer	Goodrich	Lamb	Pirsch	Wehrbein
Byars	Haberman	Langford	Robak	Weihing
Chizek	Hefner	McFarland	Rogers	Withem

Voting in the negative, 0.

Present and not voting, 14:

Bernard-	Coordsen	Hartnett	Landis	Scofield
Stevens	Hall	Johnson, R.	Lindsay	Warner
Chambers	Hannibal	Labedz	Moore	Wesely

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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The appointment was confirmed with 30 ayes, 0 nays, 14 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT

Education

The Committee on Education desires to report favorably upon the appointments listed below. The Committee suggests the appointments be confirmed by the Legislature and suggests a record vote.

Coordinating Commission:

Dr. James McClurg

VOTE: Aye: Senators Withem, Baack, Bernard-Stevens, Crosby, Chizek, Dierks, Nelson. Absent: Senator McFarland.

Board of Educational Lands and Funds:

Jane Keller

VOTE: Aye: Senators Withem, Baack, Bernard-Stevens, Crosby, Chizek, Dierks, Nelson. Absent: Senator McFarland.

(Signed) Ron Withem, Chairperson

MOTION - Approve Appointments

Mr. Withem moved the adoption of the report of the Education Committee for the following Governor appointments found in this day's Journal: Dr. James McClurg - Coordinating Commission; Jane Keller - Board of Educational Lands and Funds.

Voting in the affirmative, 34:

Beck	Crosby	Korshoj	Nelson	Scofield
Bernard-	Dierks	Kristensen	Peterson	Smith
Stevens	Elmer	Labeledz	Pirsch	Warner
Beyer	Hall	Lamb	Robak	Wehrbein
Byars	Hannibal	Langford	Rogers	Weihing
Chizek	Hefner	McFarland	Schellpeper	Wesely
Coorsen	Johnson, L.	Morrissey	Schmit	Withem

Voting in the negative, 0.

Present and not voting, 10:

Ashford	Chambers	Haberman	Johnson, R.	Lindsay
Barrett	Goodrich	Hartnett	Landis	Moore

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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These appointments were confirmed with 34 ayes, 0 nays, 10 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORTS**Government, Military and Veterans Affairs**

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Deborah L. Thomas - Director, Department of Administrative Services

VOTE: Aye: Senators Baack, Bernard-Stevens, Coordsen, Korshoj, Robak and Withem. Nay: None. Not Voting: None. Absent: Senators Beyer and Conway.

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Jerry L. Sellentin - Director, Department of Personnel

VOTE: Aye: Senators Baack, Bernard-Stevens, Coordsen, Korshoj, Robak and Withem. Nay: None. Not Voting: None. Absent: Senators Beyer and Conway.

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

Christine M. Harris - State Personnel Board

VOTE: Aye: Senators Baack, Bernard-Stevens, Coordsen, Korshoj, Robak and Withem. Nay: None. Not Voting: None. Absent: Senators Beyer and Conway.

The Committee on Government, Military and Veterans Affairs desires to report favorably upon the appointment listed below. The Committee suggests the appointment be confirmed by the Legislature and suggests a record vote.

J. L. Spray - NE Accountability & Disclosure Commission

VOTE: Aye: Senators Baack, Bernard-Stevens, Coordsen, Korshoj, Robak and Withem. Nay: None. Not Voting: None. Absent: Senators Beyer and Conway.

(Signed) Dennis Baack, Chairperson

MOTION - Approve Appointments

Mr. Bernard-Stevens moved the adoption of the report of the Government, Military and Veterans Affairs Committee for the following Governor appointments found in this day's Journal:

Deborah L. Thomas - Director, Department of Administrative Services; Jerry L. Sellentin - Director, Department of Personnel; Christine M. Harris - State Personnel Board; and J. L. Spray - NE Accountability & Disclosure Commission.

Voting in the affirmative, 25:

Barrett	Coordsen	Hannibal	Nelson	Scofield
Beck	Crosby	Hefner	Robak	Smith
Bernard-	Dierks	Johnson, L.	Rogers	Wehrbein
Stevens	Elmer	McFarland	Schellpeper	Weihing
Beyer	Goodrich	Morrissey	Schmit	Withem
Byars				

Voting in the negative, 1:

Chambers

Present and not voting, 18:

Ashford	Hartnett	Labeledz	Lindsay	Pirsch
Chizek	Johnson, R.	Lamb	Moore	Warner
Haberman	Korshoj	Landis	Peterson	Wesely
Hall	Kristensen	Langford		

Excused and not voting, 5:

Abboud	Baack	Conway	Lynch	Schimek
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These appointments were confirmed with 25 ayes, 1 nay, 18 present not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORT

Education

The Committee on Education desires to retain in Committee the appointments listed below to be acted upon at a later date.

Safety Center Advisory Council
 Fred E. Zwonechek
 John J. Siefkes
 Duane Schmidt
 Ralph Hild
 Pennie Z. Davis

Clayton L. Andrews
Betty J. Stuckey
Rollin Schnieder
Larry Morris
Thomas J. Gorman
Carol I. Cope
Laura Ackie M.D.

VOTE: Aye: Senators Withem, Baack, Bernard-Stevens, Crosby, Chizek, Dierks, Nelson. Absent: Senator McFarland.

(Signed) Ron Withem, Chairperson

MOTION - Retain Governor Appointments in Committee

Mr. Withem moved to retain in Committee the appointments listed above.

Mr. Haberman moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

The Withem motion prevailed with 28 ayes, 2 nays, 15 present and not voting, and 4 excused and not voting.

Messrs. Schmit, R. Johnson, Morrissey, Weihing, Elmer, Mmes. Beck, and Smith moved that the Legislature, by a majority vote of its members, indicate its consent for the Committee on Natural Resources to hold all gubernatorial appointments currently remaining in committee until the next regular session of the Legislature, in order to provide adequate time for deliberation and consideration of such appointments.

The Schmit et al. motion prevailed with 29 ayes, 1 nay, 16 present and not voting, and 3 excused and not voting.

MOTION - Suspend Rules

Mr. Haberman moved to suspend the rules, Rule 6, Section 7 and 8, and Rule 7, Section 3, and vote on the final passage of LB 1 without further amendment or motion.

SPEAKER BARRETT PRESIDING

Mr. Haberman withdrew his pending motion.

MOTION - Suspend Rules

Mrs. Labedz moved to suspend the rules, Rule 6, Section 7(b) to permit consideration of LBs 1, 2, 3, and 7 on Final Reading today.

Mr. Chambers requested a record vote on the Labedz motion.

Voting in the affirmative, 37:

Abboud	Crosby	Johnson, L.	Lynch	Scofield
Ashford	Dierks	Kristensen	Moore	Smith
Barrett	Elmer	Labedz	Morrissey	Warner
Beck	Haberman	Lamb	Nelson	Wehrbein
Beyer	Hall	Landis	Pirsch	Weihing
Byars	Hannibal	Langford	Robak	Wesely
Chizek	Hartnett	Lindsay	Schellpeper	Withem
Coordsen	Hefner			

Voting in the negative, 1:

Chambers

Present and not voting, 8:

Bernard-	Goodrich	Korshoj	Peterson	Schmit
Stevens	Johnson, R.	McFarland	Rogers	

Excused and not voting, 3:

Baack Conway Schimek

The Labedz motion prevailed with 37 ayes, 1 nay, 8 present and not voting, and 3 excused and not voting.

MOTION - Return LB 1 to Select File

Mr. Chambers moved to return LB 1 to Select File for the following specific amendment:

FA15S

P. 2 In line 25, put period after "purposes" and strike remaining language through lines 1 & 2 on page 3.

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 25 ayes, 0 nays, and 24 not voting.

Mr. McFarland asked unanimous consent to be excused. No objections. So ordered.

Mr. Chambers requested a record vote on his motion to return.

Voting in the affirmative, 8:

Chambers	Hall	Lindsay	Wesely	Withem
Chizek	Korshoj	Morrissey		

Voting in the negative, 29:

Abboud	Byars	Hannibal	Landis	Schellpeper
Barrett	Coorsen	Hefner	Langford	Scofield
Beck	Crosby	Johnson, L.	Moore	Smith
Bernard-	Dierks	Kristensen	Nelson	Warner
Stevens	Elmer	Labeledz	Robak	Wehrbein
Beyer	Haberman	Lamb	Rogers	Weiing

Present and not voting, 8:

Ashford	Hartnett	Lynch	Pirsch	Schmit
Goodrich	Johnson, R.	Peterson		

Excused and not voting, 4:

Baack	Conway	McFarland	Schimek
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The Chambers motion to return lost with 8 ayes, 29 nays, 8 present and not voting, and 4 excused and not voting.

Mr. Chambers moved to return LB 1 to Select File for the following specific amendment:

FA16S

P. 3, line 1, put period after "systems" and strike remaining language through lines 1 & 2.

Mr. Chambers requested a record vote on his motion to return.

Voting in the affirmative, 11:

Bernard- Stevens Chambers	Chizek Hall Hartnett	Korshoj Lindsay	Moore Morrissey	Pirsch Wesely
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Voting in the negative, 27:

Abboud	Coordsen	Hefner	Landis	Scofield
Ashford	Crosby	Johnson, L.	Langford	Smith
Barrett	Dierks	Kristensen	Nelson	Wehrbein
Beck	Elmer	Labeledz	Robak	Weihing
Beyer	Haberman	Lamb	Schellpeper	Withem
Byars	Hannibal			

Present and not voting, 7:

Goodrich	Lynch	Rogers	Schmit	Warner
Johnson, R.	Peterson			

Excused and not voting, 4:

Baack	Conway	McFarland	Schimek
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The Chambers motion to return lost with 11 ayes, 27 nays, 7 present and not voting, and 4 excused and not voting.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 1. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-103, Reissue Revised Statutes of Nebraska, 1943; to redefine the terms real property, real estate, and lands as prescribed; to state intent; to provide an operative date; to provide severability; to repeal the original section; and to declare an emergency.

Mr. Chambers requested a roll call vote.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 35:

Abboud	Coordsen	Hartnett	Landis	Rogers
Ashford	Crosby	Hefner	Langford	Schellpeper
Barrett	Dierks	Johnson, L.	Moore	Scofield
Beck	Elmer	Johnson, R.	Nelson	Smith
Beyer	Goodrich	Kristensen	Peterson	Warner
Byars	Haberman	Labeledz	Pirsch	Wehrbein
Chizek	Hannibal	Lamb	Robak	Weihing

Voting in the negative, 10:

Bernard- Stevens Chambers	Hall Korshoj	Lindsay Lynch	Morrissey Schmit	Wesely Withem
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Excused and not voting, 4:

Baack	Conway	McFarland	Schimek
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 2. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1775.01, Revised Statutes Supplement, 1989; to change who may be refunded certain taxes; to state intent; to repeal the original section; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 36:

Abboud	Coordsen	Hartnett	Landis	Rogers
Ashford	Crosby	Hefner	Langford	Schellpeper
Barrett	Dierks	Johnson, L.	Moore	Scofield
Beck	Elmer	Johnson, R.	Nelson	Smith
Beyer	Goodrich	Kristensen	Peterson	Warner
Byars	Haberman	Labeledz	Pirsch	Wehrbein
Chizek	Hannibal	Lamb	Robak	Weihing

Withem

Voting in the negative, 9:

Bernard- Stevens	Chambers Hall	Korshoj Lindsay	Lynch Morrissey	Schmit Wesely
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Excused and not voting, 4:

Baack	Conway	McFarland	Schimek
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 3. With Emergency.

A BILL FOR AN ACT relating to appropriations; to appropriate funds for the expenses incurred during the Ninety-first Legislature, First Special Session, 1989; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 41:

Abboud	Crosby	Hefner	Moore	Schmit
Ashford	Dierks	Johnson, L.	Morrissey	Scofield
Barrett	Elmer	Johnson, R.	Nelson	Smith
Beck	Goodrich	Kristensen	Peterson	Warner
Beyer	Haberman	Labeledz	Pirsch	Wehrbein
Byars	Hall	Lamb	Robak	Weihing
Chambers	Hannibal	Landis	Rogers	Wesely
Chizek	Hartnett	Langford	Schellpeper	Withem
Coorsen				

Voting in the negative, 3:

Korshoj	Lindsay	Lynch
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Present and not voting, 1:

Bernard-
Stevens

Excused and not voting, 4:

Baack Conway McFarland Schimek

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

MOTION - Bracket LB 7

Mr. Hall moved to bracket LB 7 until 12:00 p.m., 11-17-89.

Mr. Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

Mr. Hall withdrew his pending motion.

MOTION - Return LB 7 to Select File

Mr. Lindsay moved to return LB 7 to Select File for the following specific amendment:

AM055S

(Amendments to Standing Committee amendments, AM024S)

- 1 1. Insert the following new section:
- 2 "Section 1. That section 24-204, Reissue
- 3 Revised Statutes of Nebraska, 1943, be amended to read
- 4 as follows:
- 5 24-204. The Supreme Court shall have
- 6 original jurisdiction in cases relating to the revenue,
- 7 civil cases in which the state ~~shall be~~ is a party,
- 8 mandamus, quo warranto, habeas corpus, and election
- 9 contests involving state officers other than members of
- 10 the Legislature, shall have exclusive original
- 11 jurisdiction of any declaratory action challenging the
- 12 constitutionality of any bill passed by the Ninety-first
- 13 Legislature, First Special Session, 1989, and shall have
- 14 appellate and final jurisdiction of all matters of
- 15 appeal and proceedings in error which may be taken from
- 16 the judgments or decrees of the district courts, in all
- 17 matters of law, fact, or equity, ~~where~~ when the rules of
- 18 law or the principles of equity appear from the files,

- 19 exhibits, or records of said the court to have been
 20 erroneously determined. Trial in the Supreme Court of
 1 any declaratory action pursuant to this section shall in
 2 all ways be expedited and set for an early hearing..
 3 2. On page 53, line 17, strike "section" and
 4 insert "sections 24-204 and".
 5 3. Renumber the remaining sections and
 6 correct internal references accordingly.

Mr. Lamb moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 2 nays, and 21 not voting.

Mr. Chambers requested a record vote on the Lindsay motion to return.

Voting in the affirmative, 15:

Ashford	Chizek	Korshoj	Moore	Robak
Bernard-	Dierks	Lindsay	Morrissey	Wesely
Stevens	Hartnett	Lynch	Nelson	Withem
Chambers				

Voting in the negative, 27:

Abboud	Crosby	Hefner	Peterson	Scofield
Barrett	Elmer	Johnson, L.	Pirsch	Smith
Beck	Goodrich	Kristensen	Rogers	Warner
Beyer	Haberman	Lamb	Schellpeper	Wehrbein
Byars	Hall	Langford	Schmit	Weihing
Coordsen	Hannibal			

Present and not voting, 2:

Johnson, R. Labedz

Excused and not voting, 5:

Baack	Conway	Landis	McFarland	Schimek
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The Lindsay motion to return lost with 15 ayes, 27 nays, 2 present and not voting, and 5 excused and not voting.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 7. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-628, 77-631.02 to 77-631.04, 77-1249.01, and 77-1342, Reissue Revised Statutes of Nebraska, 1943, and section 77-202, Revised Statutes Supplement, 1988; to state intent; to exempt railroad rolling stock from the personal property tax; to define a term; to transfer provisions relating to collection of delinquent taxes; to eliminate provisions relating to taxation of railroad rolling stock; to harmonize provisions; to provide an operative date; to provide severability; to repeal the original sections, and also sections 77-624 to 77-627, 77-629 to 77-631.01, and 77-633, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 31:

Abboud	Dierks	Johnson, L.	Moore	Schellpeper
Barrett	Elmer	Johnson, R.	Nelson	Schmit
Beck	Goodrich	Kristensen	Peterson	Scofield
Beyer	Haberman	Labedz	Pirsch	Smith
Byars	Hannibal	Lamb	Robak	Wehrbein
Coordsen	Hefner	Langford	Rogers	Weihing
Crosby				

Voting in the negative, 12:

Ashford	Chambers	Hartnett	Lynch	Wesely
Bernard-	Chizek	Korshoj	Morrissey	Withem
Stevens	Hall	Lindsay		

Present and not voting, 1:

Warner

Excused and not voting, 5:

Baack	Conway	Landis	McFarland	Schimek
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Having failed to receive a constitutional two-thirds majority voting in the affirmative, the bill failed to pass with the emergency clause attached. The question is, "Shall the bill pass with the emergency clause stricken?"

MOTION - Reconsider Action on LB 7

Mr. Warner moved to reconsider the passage of LB 7 with the E clause attached.

Mr. Abboud moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 26 ayes, 9 nays, and 14 not voting.

The Warner motion to reconsider prevailed with 35 ayes, 7 nays, 2 present and not voting, and 5 excused and not voting.

BILL ON FINAL READING

The following bill was put upon final passage:

LEGISLATIVE BILL 7. With Emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?'"

Voting in the affirmative, 34:

Abboud	Dierks	Johnson, L.	Morrissey	Schmit
Barrett	Elmer	Johnson, R.	Nelson	Scofield
Beck	Goodrich	Kristensen	Peterson	Smith
Beyer	Haberman	Labeledz	Pirsch	Warner
Byars	Hannibal	Lamb	Robak	Wehrbein
Coordsen	Hartnett	Langford	Rogers	Weihing
Crosby	Hefner	Moore	Schellpeper	

Voting in the negative, 10:

Ashford	Chambers	Hall	Lindsay	Wesely
Bernard-	Chizek	Korshoj	Lynch	Withem
Stevens				

Excused and not voting, 5:

Baack Conway Landis McFarland Schimek

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following bills: 1, 2, 3, and 7.

MOTION - Advise Governor

Mr. Haberman moved that a committee of five be appointed to advise the Governor that the Ninety-First Legislature, First Special Session, of the Nebraska State Legislature is about to complete its work, and to return with any message the Governor may have for the Legislature.

The motion prevailed.

The Chair appointed Messrs. Hefner, Lamb, Schellpeper, Mmes. Pirsch, and Langford to serve on said Committee.

The Committee returned and escorted Governor Kay Orr to the rostrum where she delivered a message to the members.

The Committee escorted the Governor from the Chamber.

VISITORS

Visitors to the Chamber were 21 fourth, fifth, and sixth grade students and teachers from Cardinal Spellman Elementary School, Bellevue; six second, fifth, and sixth grade students and teacher from District 38, Neligh; and Representative Tim Kelley from Missouri.

MOTION - Approve Journal

Mr. Dierks moved that the Legislative Journal for the Seventh Day be approved as prepared by the Clerk.

The motion prevailed with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

MOTION - Adjourn Sine Die

Mr. Byars moved that the Ninety-First Legislature, First Special Session of the Legislature, having finished all business before it, now at 1:15 p.m. adjourn sine die.

The motion prevailed.

Patrick J. O'Donnell
Clerk of the Legislature

RECEIVED AFTER ADJOURNMENT

LEGISLATIVE JOURNAL

RECEIVED AFTER ADJOURNMENT

LEGISLATIVE JOURNAL

**NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION**

CORRECTIONS FOR THE JOURNAL

Page 117, line 7, strike "LB" and insert "LR".
The Journal for the Fifth Day was approved as corrected.
The Journal for the Seventh Day was approved.

PRESENTED TO THE GOVERNOR

Presented to the Governor on November 17, 1989, at 1:15 p.m., were the following bills: 1, 2, 3, and 7.

(Signed) Randy Tippin, Enrolling Clerk

MESSAGE FROM THE GOVERNOR

November 21, 1989

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 1, 2, 3, and 7, First Special Session, Ninety-First Legislature, were received in my office on November 17, 1989.

These bills were signed by me on November 21, 1989, and delivered to the Secretary of State.

Sincerely,
(Signed) KAY A. ORR
Governor

MESSAGE FROM THE SECRETARY OF STATE

November 21, 1989

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Mr. O'Donnell:

This letter is to inform you that the Honorable Kay A. Orr, Governor, has signed Engrossed Legislative Bills 1, 2, 3, and 7, First Special Session, Ninety-first Legislature on the 21st day of November, 1989 and said bills were delivered to the office of Secretary of State at 10:16 A.M. on November 21, 1989.

Further, I hereby acknowledge receipt of these bills for official filing in the office of Secretary of State in accordance with law. These bills are now a matter of public record in the office of Secretary of State.

Finally, I would request that a copy of this letter be placed in the official Journal for the Special Session just concluded.

Respectfully,
(Signed) ALLEN J. BEERMANN
Secretary of State

CERTIFICATE

I, Patrick J. O'Donnell, Clerk of the Legislature, hereby certify that the foregoing communications are true and correct copies of letters provided concerning action on bills after adjournment of the Ninety-First Legislature, First Special Session.

Patrick J. O'Donnell
Clerk of the Legislature

November 21, 1989
Lincoln, Nebraska

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CHRONOLOGY OF BILLS
NINETY-FIRST LEGISLATURE
FIRST SPECIAL SESSION
1989

LEGISLATIVE BILL 1. By Speaker Barrett at request of Governor

Nov. 8	1	Read first time	59
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	69
Nov. 13	3	Attorney General's Opinion #89071 to McFarland	85
Nov. 13	3	Placed on General File - Com AM025S	91
Nov. 14	4	Committee AM025S pending	100
Nov. 14	4	Schmit AM028S (on file) and Chambers FA1S to committee amendment lost	102
Nov. 14	4	Committee AM025S adopted. Elmer AM022S (on file) lost	104
Nov. 14	4	Conway AM041S to committee amendment adopted. Advanced for Review	105
Nov. 14	4	Placed on Select File - AM501S	108
Nov. 15	5	AM501S (E & R) adopted. Elmer AM047S (on file) withdrawn. Conway-Lamb AM054S adopted. Advanced for Engrossment ..	130
Nov. 15	5	Correctly engrossed. ER601S change	133
Nov. 17	7	Haberman motion to vote without further debate withdrawn	154
Nov. 17	7	Labeledz motion to suspend rules prevailed. Chambers motions to return to Select File for FA15S and FA16S lost	155
Nov. 17	7	Final Reading w/E 35-10-4	157
Nov. 17	7	Speaker signed	164
Nov. 21	AJ	Presented to Governor (11/17). Approved by Governor (11/21)	166
Nov. 21	AJ	Message from Secretary of State	167

LEGISLATIVE BILL 2. By Speaker Barrett at request of Governor

Nov. 8	1	Read first time	59
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	69
Nov. 13	3	Attorney General's Opinion #89070 to McFarland	82
Nov. 13	3	Placed on General File - Com AM026S	92
		(printed separate)	
Nov. 14	4	Hall FA2S and FA3S to committee amendment adopted. Withem FA4S pending	107
Nov. 14	4	Withem pending FA4S p. 108 lost. Committee AM026S p. 92 adopted as amended. Hall motion to indefinitely postpone lost. Landis FA5S adopted as amended by Hall FA6S, FA7S, and FA8S. Advanced for Review	110
Nov. 15	5	Placed on Select File - AM502S	114
Nov. 15	5	AM502S (E & R) adopted. Advanced for Engrossment	132
Nov. 15	5	Correctly Engrossed	133
Nov. 17	7	Labeledz motion to suspend rules prevailed	155
Nov. 17	7	Final Reading w/E 36-9-4	158
Nov. 17	7	Speaker signed	164
Nov. 21	AJ	Presented to Governor (11/17). Approved by Governor (11/21)	166
Nov. 21	AJ	Message from Secretary of State	167

LEGISLATIVE BILL 3. By Speaker Barrett at request of Governor

Nov. 8	1	Read first time	59
Nov. 9	2	Placed on General File	66
Nov. 14	4	Advanced for Review	100
Nov. 14	4	Placed on Select File	102
Nov. 15	5	Advanced for Engrossment	130
Nov. 15	5	Correctly Engrossed	133
Nov. 17	7	Labeledz motion to suspend rules prevailed	155
Nov. 17	7	Final Reading w/E 41-3-5	159
Nov. 17	7	Speaker signed	164
Nov. 21	AJ	Presented to Governor (11/17). Approved by Governor (11/21)	166
Nov. 21	AJ	Message from Secretary of State	167

LEGISLATIVE BILL 4. By Haberman

CHRONOLOGY OF BILLS

171

Nov. 8	1	Read first time	59
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	69
Nov. 14	4	Indefinitely postponed	93

LEGISLATIVE BILL 5. By Haberman

Nov. 8	1	Read first time	60
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	69
Nov. 14	4	Indefinitely postponed	93

LEGISLATIVE BILL 6. By Haberman

Nov. 8	1	Read first time	60
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	70
Nov. 13	3	Warner motion to suspend rules to place on General File laid over	92
Nov. 14	4	Indefinitely postponed	94
Nov. 14	4	Warner motion to place on General File laid over	102
Nov. 15	5	Warner pending motion p. 102 to place on General File prevailed	126
Nov. 15	5	Landis AM056S lost. Hall motion to indefinitely postpone prevailed	127

LEGISLATIVE BILL 7. By Warner

Nov. 8	1	Attorney General's Opinion #89065 to Warner	44
Nov. 8	1	Read first time	60
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	70
Nov. 13	3	Attorney General's Opinion #89068 to McFarland	77
Nov. 13	3	Placed on General File - Com AM024S (printed separate)	92
Nov. 14	4	Attorney General's Opinion #89072 to Warner	96

Nov. 15	5	Committee AM024S sustained division of question. Committee FA10S adopted as amended by Warner FA11S and AM053S. Committee FA12S adopted. Lindsay AM043S lost. Committee FA13S adopted as amended by Haberman AM050S. Committee FA14S pending	117
Nov. 15	5	Dierks AM044S lost. Hefner request for ruling of Chair declined. Committee FA14S lost. Advanced for Review	124
Nov. 15	5	Placed on Select File - AM503S (on file)	132
Nov. 15	5	AM503S (E & R) adopted. Hall AM057S withdrawn. Advanced for Engrossment	132
Nov. 15	5	Correctly Engrossed	133
Nov. 17	7	Labeledz motion to suspend rules prevailed	155
Nov. 17	7	Hall motion to bracket until 12 midnight withdrawn. Lindsay motion to return to Select File for AM055S lost	160
Nov. 17	7	Failed on Final Reading w/E 31-12-6	162
Nov. 17	7	Warner motion to reconsider action on Final Reading prevailed. Final Reading w/E 34-10-5	163
Nov. 17	7	Speaker signed	164
Nov. 21	AJ	Presented to Governor (11/17). Approved by Governor (11/21)	166
Nov. 21	AJ	Message from Secretary of State	167

LEGISLATIVE BILL 8. By Schmit

Nov. 8	1	Read first time	63
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	70
Nov. 14	4	Indefinitely postponed	94

LEGISLATIVE BILL 9. By Schmit

Nov. 8	1	Read first time	63
Nov. 9	2	Referred to Committee on Revenue	66
Nov. 9	2	Schmit motion to rerefer to General File withdrawn	68
Nov. 9	2	Notice of hearing (11/10)	70
Nov. 14	4	Indefinitely postponed	94

**LEGISLATIVE BILLS
BY INTRODUCERS**

WILLIAM E. BARRETT

LB

1**

Change definition of real and personal property.

2**

Change provisions relating to collection, payment, and refunds of personal property taxes.

3**

Appropriate funds for special session expenses.

REX HABERMAN

LB

4

Increase the train mile excise tax on railroads.

5

Provide an increase in the excise tax on grade crossings.

6

Change provisions related to railroad rolling stock.

LORAN SCHMIT

LB

8

Eliminate certain exemptions from real property taxes.

9

Exempt personal property other than motor vehicles from taxation.

JEROME WARNER

LB

7

Exempt railroad rolling stock from the personal property tax.

At the request of the Governor.

**LEGISLATIVE BILLS
REFERRED TO COMMITTEE**

Revenue

Chairperson - Timothy J. Hall

**1
8**

**2
9**

4

5

6

7

SUMMARY OF LEGISLATION

Ninety-First Legislature, First Special Session

The following table shows the final disposition:

Total Number of Bills Introduced	9
Total Number of Resolutions Introduced	11

Approved by Governor, 4:

1e	2e	3e	7e
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Resolutions Adopted, 9:

2	3	4	5	6	8
9	10	11			

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